EXHIBIT A

This is not a solicitation of votes on a plan.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
INNKEEPERS USA TRUST, *et al.*,	)	Case No. 10-13800 (SCC)
Debtors.	)	Jointly Administered

MIDLAND LOAN SERVICES, INC.'S MOTION TO TERMINATE EXCLUSIVITY

Midland Loan Services, Inc. ("Midland")[1] hereby files its Motion to Terminate Exclusivity (the "Motion") and respectfully represents:

[1] Midland is the special servicer pursuant to the Pooling and Servicing Agreement dated as of August 13, 2007 (the "Special Servicing Agreement") for that certain secured loan in the amount of not less than $825,402,542 plus interest, costs and fees (the "Fixed Rate Mortgage Loan") owed by certain of the above referenced Debtors. The Fixed Rate Mortgage Loan was made pursuant to that certain loan agreement dated as of June 29, 2007 (as amended, the "Fixed Rate Mortgage Loan Agreement"), and is evidenced by (i) a certain Replacement Note A-1 and (ii) a certain Replacement Note A-2, each dated as of August 9, 2007, and each in the original principal amount of $412,701,271. Replacement Note A-1 was assigned to LaSalle Bank National Association as trustee for the holders of the LB-UBS Commercial Mortgage Trust 2007-C6. Bank of America, N.A. is the successor-in-interest to LaSalle Bank National Association (the "Fixed Rate Trustee"). Replacement Note A-2 is currently held by the trustee for the holders of the LB-UBS Commercial Mortgage Trust 2007-C7.

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PRELIMINARY STATEMENT

The Honorable Mary F. Walrath, Bankruptcy Judge in Wilmington, Delaware, once noted on the record during a contested confirmation hearing:

> "This is not a situation where the shareholders, the old equity holders, are being given all the equity in the case, but I think that the case is sufficiently similar to that because all of the equity is being given to one Creditor group. That creditor group professes that it would prefer to have all the equity rather than have some $89 million in cash and $236 million in secured notes. That gives the Court some pause because I know in the marketplace, secured debt and cash is better than stock unless the value of the entity has an upside. And if that is the case, if there is an upside there, then I think that the other Creditor constituents have a right to test that and to see whether or not there is a plan that can give them some value without eliminating or otherwise violating the rights of the first-lien holders. But I think the best way to test that is under Section 1129 and to allow the Creditors a choice of pressing two plans."

In re Pliant Corp., Case no. 09-10443, Bankr.DE.2009 (Transcript attached as Exhibit "B", beginning on p. 229.). The Pliant Court succinctly stated exactly why the Debtors' plan exclusivity should be terminated in these cases and why the Motion should be granted.

1. Midland requests that this Court, pursuant to 11 U.S.C. § 1121(d), terminate the Debtors' exclusive right to file a plan and to solicit acceptances of any such plan in order to allow Midland to file a plan of reorganization and disclosure statement in these cases and to solicit acceptances of any such plan. To date, the Debtors have embarked upon a chapter 11 process whereby they seek approval of a Lock-Up Agreement with one secured creditor — Lehman, providing for a plan of reorganization that favors only Lehman and Apollo, the out of the money equity owner of the Debtors. Due to the pursuit of the Lock-Up Agreement, a consensus has emerged in these cases. The Debtors have quickly generated an overwhelming consensus against themselves, their Lock-Up Agreement and the plan described therein. These

cases are primed for an alternative direction. Plan exclusivity should be terminated and this Motion granted.

2. The Debtors are owned and controlled by Apollo. The Debtors' CRO was picked by Apollo first to be a director of Innkeepers and then hired as their CRO at the direction of the Apollo-controlled board. Can there be any doubt why Apollo remains in the picture as a 50% owner of the reorganized debtors to the detriment of almost all other creditors and preferred shareholders? There is no doubt why this has happened nor any surprise that the Lock-Up Agreement has been rejected by the overwhelming consensus of creditors and preferred equity holders in these cases.

3. The Debtors, with Lehman and Apollo joined at the hip, devised a scheme to allow Apollo to emerge with 50% of the reorganized Debtors with no money flowing to the estates and no market test of the new equity Apollo would receive. Before and after these cases began, the Debtors' investment banker – Moelis – was not instructed to find the optimum deal in the market as the basis to reorganize. The Debtors refused to market the Lock-Up Agreement or the Lehman/Apollo Plan embedded therein. Yet, at least one alternative exists to the plan embedded in the Lock-Up Agreement. That alternative would likely lead to an easily confirmable plan because (a) no secured creditor is forced to accept a cramdown note, (b) a market test of value is mandated to allow for higher and better bids for the Debtors or their assets, and (c) secured creditors can take their collateral in satisfaction of their claims if they decline to accept a restructured debt.

4. The Debtors' plan process is an integrated transaction to favor Lehman and Apollo. The Debtors' process imposes an involuntary write-down of hundreds of millions of dollars in debts while allowing the current owner to emerge owning half of the reorganized

companies without either paying the estates or exposing the process to the market.[2] The Debtors' skewed view of Chapter 11 cries out for the alternatives that terminating exclusivity would provide. Terminating plan exclusivity would give these cases a legitimacy that the Debtors lack and would allow creditors the chance to increase their returns. It would also neutralize the Debtors' attempt to use exclusivity as a weapon to file and prosecute a plan that is supported only by Lehman and Apollo and is doomed to failure as matter of law

5. While in typical cases, courts might permit debtors time to propose a confirmable, consensual plan, doing so in this case would serve no purpose. The Lock-Up Agreement describes a plan structure that will fail. The Lock-Up Agreement has been opposed by $1.2 billion of secured lenders, all of the mezzanine lenders and the preferred equity. Each filed a substantial objection opposing the Lock-Up Agreement that, among other things, precludes the Debtors from discussing or negotiating for a different plan that might otherwise increase returns to the creditors. If that were not enough, it also includes draconian sanctions if the Debtors take actions inconsistent with that strategy. By tying the Debtors' hands and preventing them from acting to maximize the estates' assets for the benefit of all stakeholders, the Lehman/Apollo Plan and Lock-Up Agreement represents a surrender and abdication of the Debtors' fiduciary duties.

6. The plan contemplated by the Lock-Up Agreement reduces secured debt, eliminates deficiency claims and transfers all of the upside in the assets for the exclusive benefit of Lehman and Apollo. There is something wrong with this picture – it shows that bankruptcy

[2] The size of the write-down, which would be the largest CMBS write-down of which Midland is aware, emphasizes the need for an open and market-tested process.

court jurisdiction has been invoked for the wrong purpose – to allow the Debtors to control the process for Apollo's benefit to the exclusion of creditors with very large and senior claims.

7. Midland requests that this Court level the playing field and terminate exclusivity. There is no time – or need – for delay. The solution to this problem is a simple one – terminate exclusivity and allow for the filing of a different, market-driven plan.

8. Five Mile Capital II Pooling REIT LLC, an affiliate of Five Mile Capital Partners LLC (collectively "Five Mile") (one of the proposed DIP lenders in these cases) approached Midland with a Commitment to fund $236 million of new money as a basis for a proposed plan of reorganization that could increase the Debtors' enterprise value over the enterprise value implicit in the Lehman/Apollo Plan, while providing the other creditor constituencies a higher recovery more reflective of the intrinsic value of their collateral. The Commitment would also give the Debtors' secured creditors the freedom to take their collateral if they do not wish to go along with the proposal. Finally, unlike the Lehman/Apollo Plan, the Commitment is subject to higher and better offers, and mandates the commencement of a fair marketing process approved by the Court through competing plans of reorganization or otherwise for the Debtors and their assets.

9. Termination of exclusivity is mandated, especially here, where a debtor is running its case for the benefit of its controlling owner – to ensure that Apollo emerges owning equity through a process that should only occur via a "new value plan" done in compliance with *LaSalle*. Terminating exclusivity provides for a market test of value and would allow the creditors whose recoveries are at risk to choose their fate.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408. The predicates for relief requested herein are sections 105 and 1121 of the Bankruptcy Code.

FACTUAL BACKGROUND

11. In 2007, Apollo acquired Innkeepers primarily with debt. Lehman, now in its own Chapter 11 case, assisted Apollo in arranging for over $1 billion of debt, including debt that it ultimately sold on the public markets.

12. As a condition to approving Apollo's acquisition, Marriott (the company that franchised over half of the Debtors' hotels) required that many of the Debtors execute Property Improvement Plans ("PIPs") to assure that the hotels were brought up to the then current standards. As part of the financing, over $40 million was set aside for capital improvements to hotels included in the Midland Collateral and Apollo executed a Required Improvements Guaranty that guaranteed the payment and performance of the obligation for improvements.

13. In 2007, Marc Beilinson ("Beilinson") was selected by Apollo to join the Innkeepers' board of directors. Barely one year later, Beilinson was hired by that same Apollo-controlled board to be the CRO and has continued in that role thereafter. In April, he received an additional $1 million payment.[3]

14. The Midland Debtors began making improvements to their facilities in 2008, the reserve funds were expended before the PIPs were completed. Work was stopped (or slowed to the point that it became unnoticeable) and Marriott's displeasure mounted. In late 2008, the

[3] The additional $1 million payment is potentially avoidable – a type of claim that the Apollo/Lehman Plan would release.

Debtors employed one of their directors as a Chief Restructuring Officer. Apollo did not perform under its Required Improvements Guaranty or otherwise provide any additional capital to advance the work on the PIPs.

15. On March 16, 2010, Marriott's patience had worn thin and it sent notifications that it would terminate the franchises of a number of the Debtors' hotels if the PIPs were not completed in ninety (90) days. During March and April, the Debtors wrongfully diverted the revenues from Midland's Collateral and paid millions of dollars to their professionals and CRO. In April, the Debtors launched their strategy with negotiations involving both Lehman and Apollo that resulted in the Lock-Up Agreement.

16. On July 19, 2010, (the "Petition Date"), the Debtors filed their Chapter 11 cases and sought to assume the Lock-Up Agreement.

17. The evidence will show that the Debtors, Lehman and Apollo intended from the outset of their discussions to secure Court approval of the Lock-Up Agreement. Their goal is to use the bankruptcy process to allow Apollo to emerge as owning at least part of the Debtors[4] while also creating a punitive deterrent to discourage the Court or other parties from interfering with that strategy.[5] A blatant consequence of taking this course of action is the Debtors'

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[4] Marriott's Limited Objection to the Motion to Assume the Plan Support Agreement (Docket No. 246), ¶ 9 refers to a June 25, 2010 "Side Letter" that shows the Debtors' expectation that that Apollo would emerge with at least 50% of the equity was cemented well before the Lock-Up Agreement was signed. Well before the Petition Date, the Debtors and Marriott apparently agreed that the 50:50 sharing of equity would not trigger "change of control" provisions under the various franchise agreements. It apparently provides that Marriott "will not unreasonably withhold its consent to a "change of control" . . . , if upon the conclusion of the reorganization contemplated by this Agreement, Apollo Investment Corporation or its affiliates ("Apollo") or Lehman Brothers Holdings, Inc., LAMCO, LLC, Lehman ALI, Inc. or its or their affiliates ("Lehman") obtains, individually, or collectively, a controlling interest in the Company (Apollo and Lehman, individually or collectively own at least fifty percent (50%) of the Company)."

[5] The fact that the Apollo – Lehman agreement was signed on the Petition Date and the Plan Term Sheet attached to the Lock-Up Agreement provides that an acceptable plan must include §§ 1145 and 1146 exemptions for both "the issuance of the New Equity **and any subsequent transfer of New Equity**

abrogation of their fiduciary duties to all constituents in favor of Lehman and its partner to be Apollo. The Lock-Up Agreement includes an enforcement mechanism designed to thwart attempts at debtor independence because it includes an extensive list of ways for Lehman to terminate the Debtors' use of its cash collateral. It also includes provisions that require that the Lehman/Apollo Plan be confirmed and implemented on certain deadlines or else Lehman is allowed to liquidate its collateral.

18. The Lock-Up Agreement even dictates that the Debtors are not permitted to file any significant pleading that Lehman had not approved. It also compels the Debtors to object to certain pleadings and exposes the Debtors to the loss of the use of Lehman's cash collateral if certain events outside of their control occurred. Finally, the Lock-Up Agreement includes an illusory "fiduciary out" that would effectively permit Lehman to decide whether to allow a belated exercise of fiduciary independence by the Debtors or risk the loss of Lehman's cash collateral use or perhaps even the loss or liquidation of Lehman's collateral.[6]

19. The Lock-Up Agreement includes defined "Milestones" for the plan process, including when the Motion to approve the Lock-Up Agreement was to be filed, when it was to be approved, when the Lehman/Apollo Plan was to be filed, confirmed and implemented. The Lock-Up Agreement, if implemented, would require that each Milestone be achieved. Failing to do so would create great risk to the Debtors since it could trigger the liquidation of Lehman's collateral and the loss of Lehman's cash collateral.

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by Lehman prior to the Effective Date" (emphasis added) makes the strategy and intent abundantly clear.

[6] The Debtors might argue that the "Fiduciary Out" allows them to exercise their fiduciary duties. However, that exercise would come at a high price the Debtors are unwilling to pay – the immediate loss of use of Lehman's cash collateral and the ultimate loss of the Lehman collateral when a "Plan Milestone" is not achieved. The real teeth – loss of the Lehman Pool hotels – occurs when the deadline passes for a Lehman favored plan to be confirmed and the Debtors have agreed that such right (should the Lock-Up Agreement be approved) remains inviolate. Lock-Up Agreement, ¶ 25(c).

20. The evidence will show that neither the Debtors, Lehman nor Apollo ever had any intention to explore alternative transactions or plans that would provide a greater return to any creditor than was contemplated by the Lehman/Apollo Plan. The Debtors' investment banker was never empowered to search for higher or better options. It is beyond doubt that neither the Debtors nor Apollo ever "shopped" the proposal for one that would benefit others at the expense of Apollo. They apparently view their duties as flowing to themselves instead of to their creditors who are owed over $1.2 billion dollars.

21. On August 20, 2010, Five Mile provide a draft of a Binding Commitment for the Acquisition of Innkeepers USA Trust that was subsequently updated (the "Commitment") to Midland. Negotiations on the Commitment have taken place since August 20 between Midland and Five Mile. Agreement on the final terms of the Commitment has been reached and on August 29, 2010, and Midland executed the Commitment after completing its approval process. A copy of the updated Five Mile Commitment is attached hereto as Exhibit "A".

22. The Commitment is not a plan or a disclosure statement. It is a financing commitment by Five Mile to fund a chapter 11 plan of reorganization to be filed by Midland if certain conditions are satisfied: (i) the Court must first terminate exclusivity by October 15, 2010 to permit Midland to file a plan and disclosure statement; (ii) Five Mile must be given access to the Debtors books and properties in order for Five Mile to complete confirmatory due diligence to its satisfaction; and (iii) this Court must approve an open transparent marketing process for competing plans and standard bid protections in favor of Five Mile. Absent the satisfaction of these conditions, no plan can be filed by Midland predicated on the Commitment.

23. Some key points in the Commitment[7] provide for:

[7] These are illustrative and terms of the Commitment are binding in the event of an inconsistency.

(a) a new capital structure of $803.4 million in aggregate indebtedness and $236.6 in new equity capital (cash) to be invested by Five Mile.

(b) approximately $89.1 million in additional recovery value for the non-Lehman Pre-Petition creditors and $187.2 million in cash pay downs of indebtedness, including retirement of $67.75 of DIP financing, the purchase of the B-Notes for $6.6 million and payments on the C-Note of $12.1 million."

(c) a proposed treatment of the Lehman Floating Rate Mortgage Loan that better reflects the value of the collateral supporting the Lehman obligation.

(d) an increase in enterprise value of the Debtors by approximately $125 million over the valuation contemplated in the Lock-Up Agreement.

(e) committed exit financing necessary for the success and emergence of Innkeepers from bankruptcy.

(f) a court approved open marketing process for competing plans to seek higher and better recoveries for the Debtors and their creditors versus the Lock-Up and reasonable bid protections for Five Mile.[8]

(g) no secured creditor to have its debt reduced through cramdown. Instead, it contemplates that each secured creditor retains the right to take ownership of its collateral in full satisfaction, settlement, release and exchange for its claim

24. Unlike the plan embedded in the Lock-Up Agreement, no secured creditor will be forced to take a cramdown secured note unsatisfactory to that secured creditor and without recovery on the balance of its deficiency clams. Rather, the flexibility provided by the Commitment allows parties unhappy with their treatment to simply take their collateral in full satisfaction of their claims.

ARGUMENT

I. THE COURT SHOULD TERMINATE EXCLUSIVITY

25. As discussed above, the Lock-Up Agreement calls for a plan in favor of Lehman and Apollo which is a "new value plan" that results in Apollo emerging with equity in the

[8] The refusal to provide for a market test to seek higher and better bids has been a fundamental objection by Midland from the onset. Allowing higher and better bids would make the Commitment the floor as compared with the Lock-Up Agreement which created caps on returns to secured creditors.

reorganized entities in violation of *LaSalle*. The Lock-Up Agreement defines a Lehman/Apollo Plan that forces, via cramdown, substantial reductions in the claims of secured creditors and pays nothing to mezzanine lenders and deficiency claims. The Lock-Up Agreement effectively surrenders control of these bankruptcy cases to Lehman and Apollo, and is tangible evidence that the Debtors have abandoned their fiduciary duties to maximize recoveries for all constituents.

26. In contrast, based on the Commitment, and only if permitted to do so by the Court, Midland is capable of proposing a fair and procedurally appropriate plan that also allows for higher and better offers to maximize creditor recovery. A plan based on the Commitment vastly improves the return to creditors (other than Lehman) and allows for higher and better offers to improve the treatment even more.

27. To allow Midland to propose a plan based on the Commitment, the Court should exercise its discretion to (i) terminate exclusivity and (ii) enter a scheduling order that makes the relief meaningful by giving Midland a reasonable opportunity to file and solicit confirmation of such plan, if permitted to do so by the Court.

A. Overview of Exclusivity; Cause to Terminate

28. Section 1121 of the Bankruptcy Code is intended to promote and protect the debtor's ability to develop a consensual plan of reorganization, not to encourage abuse of the Bankruptcy Code's protections. Section 1121 grants debtors the exclusive right to file a plan of reorganization during the first 120 days of a Chapter 11 case, and to solicit votes for such a plan during the first 180 days, unless the court finds "cause," pursuant to section 1121(d), to extend or reduce those exclusive periods.

29. The Bankruptcy Code does not define "cause" for extending or shortening the exclusive periods, but relevant factors include:

(a) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands;
(b) the existence of good faith progress towards reorganization;
(c) whether the debtor has made progress in negotiations with its creditors;
(d) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
(e) the amount of time which has elapsed in the case;
(f) the size and complexity of the case;
(g) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information to allow a creditor to determine whether to accept such plan;
(h) the fact that the debtor is paying its bills as they become due; and
(i) whether an unresolved contingency exists.

In re Adelphia, 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006). The party seeking to reduce or extend the exclusivity period has the burden of establishing "cause." *E.g. In re Texaco, Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987).

30. The facts of this case overwhelmingly support a finding of "cause" to terminate exclusivity under factors (b)-(g), above. Here, the Debtors have not demonstrated good faith in proposing the Lock-Up Agreement to prosecute the Lehman/Apollo Plan and effectively violate (a) above. Rather, the Debtors seek the Court's blessing for a process that would benefit only one secured creditor and the Debtors' ultimate parent. The totality of their doing so is contrary to (b) above. Indeed, the Lehman/Apollo Plan has the hallmarks of a "new value plan" by wiping out unsecured and deficiency claims, allowing the current parent to emerge with equity without compliance with the fundamental requirements for "new value plans". The ultimate parent benefits from exclusivity while the Lock-Up Agreement would create the "*in terrorem*" effect to force the Court and creditors to approve the process or risk losing 20 of the Debtors' over 70 hotels.

31. Under the proposed Lock-Up Agreement, the Debtors effectively surrendered substantial control over this case to Lehman. The Lock-Up Agreement includes a myriad of

ways for Lehman to terminate the Debtors' use of Lehman's cash collateral if the Debtors do anything Lehman opposes. Instead of Debtors exercising their fiduciary duty to maximize recoveries for *all* constituencies, it supplicates itself to Lehman, not surprisingly, the party that contracted with Apollo. The proposed Lock-Up Agreement, however, prevents the Debtors from deviating from Lehman/Apollo Plan, and even prohibits the Debtors from discussing any alternative arrangements without Lehman's consent. Any effort toward an alternative plan or restructuring risks the loss of operating funds (the Lehman cash collateral) for twenty of the Debtors' hotels.

32. Midland is prepared to file and prosecute a reasonable, fair, confirmable plan for the Debtors that provides for a better recovery than the Lehman/Apollo Plan while leaving the door open to even higher and better recoveries to all creditors. Under the circumstances, there is compelling cause to grant leave to file and pursue confirmation of a competing plan in this case.

B. The Court Should Terminate the Debtors' Exclusivity to Permit Midland to Propose an Alternative to the Lehman/Apollo

33. As discussed above, the Lehman/Apollo Plan would be a "new value" plan, which proposes to provide new equity to Apollo while wiping out unsecured creditors (*i.e.*, deficiency claims, mezzanine lenders and other unsecured creditors).[9] The Debtors have affirmatively rejected overtures of interested parties who have the financial capability to propose and implement alternative plans to conduct due diligence. Under a well-established body of case-law, the filing of a plan that favors equity to the detriment of creditors constitutes "cause" under section 1121(d) to terminate plan exclusivity and open the process to competitive (*i.e.*, real, comparable) proposals. *See Bank of Am. Nat'l Trust & Savings Ass'n v. 203 North LaSalle*

[9] The Debtors' contemplated Plan Term Sheet would include exemptions in favor of Apollo under 11 U.S.C. §§ 1145 & 1146 – exemptions only available for transfers contemplated by plans of reorganization.

St. P'ship, 526 U.S. 434, 119 S.Ct. 1411 (1999) (holding that absolute priority rule was violated where debtor's plan only permitted its shareholder to invest new capital to obtain all the equity in the new company).

34. As explained by the Supreme Court in *LaSalle*, the problem with granting old equity the exclusive right to the property

> is that **the exclusiveness of the opportunity, with its protection against the market's scrutiny** of the purchase price by means of competing bids or even competing plan proposals, renders the partners' right a property interest extended 'on account of' the old equity position and therefore subject to an unpaid senior creditor class's objection. (Emphasis added)
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> 526 U.S. 434, 456

Exclusivity to propose a plan that benefits insiders is the interest in property that would be improperly retained under the Lock-Up Agreement. It is exclusivity itself, that Apollo enjoys vicariously through its complete ownership of the Debtors, that is a property interest "on account of the old equity position" proscribed by *LaSalle*. Terminating exclusivity will not necessarily derail the Debtors' plan because the Debtors can propose the Lehman/Apollo Plan without the need for exclusivity. *See In re R.G. Pharm., Inc.*, 374 B.R. 484 (Bankr. D. Conn. 2007) ("The fact that the debtor no longer has the *exclusive* right to file a plan does not affect its concurrent right to file a plan.") (citation omitted).

35. Courts frequently terminate exclusivity where a debtor's proposed plan leaves a creditor constituency out of the money even though a viable alternative plan could provide a greater recovery to more creditors.[10] The "potential benefit to the estate of . . . producing some return to a very large group of creditors, who . . . would be wiped out completely" by a debtor's plan "is a significant basis for termination." *In re TCI2 Holdings, LLC*, 09-13654 (JHW) (Bankr.

[10] The Lock-Up Agreement would leave secured creditors' deficiency claims and the mezzanine lenders with no recovery.

D.N.J. August 27, 2009) (relevant transcript excerpts attached hereto as Exhibit "C"), (granting motion to terminate exclusivity to permit unsecured noteholders to file a competing plan where debtor's plan proposed to wipe out everyone but the first lien lender while giving another constituency – including possibly to Donald Trump, an equity holder of the debtor – the opportunity to exchange $100 million for all the equity in the reorganized debtor).

36. Similarly, in *Pliant Corp.*, where only one creditor group was given equity under the Plan, with no opportunity for others to bid on that equity, the Court found that it was sufficiently similar to the facts under *LaSalle* to warrant terminating exclusivity. The Court determined that "**if there is an upside there . . . that the other creditor constituents have a right to test that and to see whether or not there is a plan that can give them some value**." (Emphasis added) *See Exhibit "B"; see also In re Seitel, Inc.*, Case No. 03-12227 (PJW) (Bankr. D. Del. Nov. 3, 2003) (relevant transcript excerpts attached hereto as Exhibit "D") (approving motion to terminate exclusivity in order to provide equity holders with information regarding alternative plan with a potentially higher recovery for all creditors); *In re Haw. Telecom Commucn's, Inc., et al.*, Case No. 08-02005 (LK) (Bankr. D. Haw. July 1, 2009) (relevant transcript excerpts attached hereto as Exhibit "E") (denying debtor's motion to extend exclusive periods to allow other parties in interest, including a potential acquirer of the debtor, to file a competing plan where public interest was best served by terminating exclusivity); *In re Fremont Gen. Corp.*, Case No. 08-13421 (ES) (Bankr. C.C. Cal. July 16, 2009) (order terminating exclusivity attached hereto as Exhibit "F") (terminating exclusivity where debtor's plan allowed equity holders to retain certain interests without providing full recovery to unsecured creditors); *In re FX Luxury Las Vegas I, LLC*, Case No. 10-17015 (BAM) (Bankr. D. Nev. June 16, 2010) (relevant transcript excerpts attached hereto as Exhibit G) (terminating debtor's exclusivity

within the first 60 days of the case, explaining that once the debtor "commences a bankruptcy case, the bankruptcy code requires me to take into account the interests of the entire estate, . . . not to approve processes that unduly favor one party or the other, but to try . . . to open up a transparent process."); *In re Bosque Power Company, LLC*, Case No. 10-60348 (RBK) (Bankr. W.D. Tex. July 22, 2010), (order and findings of fact and conclusions of law attached hereto as Exhibit H), (terminating debtors' exclusive period to solicit acceptances of "new value" plan and allowing parties in interest to file competing plans where doing so would "promote the maximum recovery to creditors" and "promote an environment in which a consensual plan may be negotiated"); *In re Situation Mgmt. Sys., Inc.*, 252 B.R. 859 (Bankr. Mass. 2000) (terminating exclusivity to permit competing plans in context of "new value" plan).

37. In *In re Global Ocean Carriers Ltd.*, 251 B.R. 31, 49 (Bankr. D. Del. 2000), the Delaware Bankruptcy Court followed *203 North LaSalle* where the debtors' controlling equity holder sought, through his control of the debtor, to sell the equity to a "non-shareholder" – his daughter – holding that the plan violated the absolute priority rule. As a result, the Bankruptcy Court ruled that "[t]o avoid this result the Debtors must subject the 'exclusive opportunity' to determine who will own [the Debtors] to the market place test. . . . This can be achieved by either terminating exclusivity and allowing others to file a competing plan or allowing others to bid for the equity . . ."; *see In re Davis*, 262 B.R. 791 (Bankr. D. Az. 2001) (refusing to extend exclusivity where proposed plan would violate absolute priority rule by permitting individual debtors to retain equity); *Situation Mgmt. Sys.*, 252 B.R. 859 (finding cause to terminate exclusivity to permit competitive bidding).

38. As in the above cases, the Lehman/Apollo Plan would violate Bankruptcy Code section 1129(b)(2)(B)(ii) (*i.e.*, the absolute priority rule) by ensuring that the ultimate parent

would emerge with equity while hundreds of millions of dollars in unsecured claims are wiped out without providing a market test for the equity interest. As with *LaSalle* and the other cases cited above, cause therefore exists to terminate exclusivity and to open the process to a competitive plan. The Debtors' exclusivity should therefore be terminated to permit Midland to file a competing plan and level the playing field.

C. It Is In The Best Interests of the Unsecured Creditors, Including Deficiency Claimants, to Permit Midland to File a Plan

39. Ultimately, it is in the best interest of the Debtors' estates, including creditors with unsecured deficiency claims and non-Insider equity holders, to permit Midland to propose a plan that, unlike the Lehman/Apollo Plan, will provide Lehman with its legal entitlement under the Bankruptcy Code (but not *more* than such entitlement) and provide recoveries/potential upside to all unsecured creditors (including deficiency claims). Competing plans may even motivate the Debtors and Lehman to engage in expedited *meaningful* negotiations resulting in confirmation of one joint consensual plan. "It may well be, as has been the experience in cases not only in this Court but in other courts, that while the process starts out after termination of exclusivity with competing plans**,** the ongoing process of the case results in compromises and negotiations whereby one joint plan goes forward." *See In re EUA Power Corp.*, 130 B.R. 118, 119 (Bankr. D.N.H. 1991). Indeed, the existence of competing plans is likely to encourage negotiations between the competing parties, a result the Debtor has been unable or unwilling to engage in to date. *See In re Mother Hubbard, Inc.*, 152 B.R. 189, 195 (Bankr. W.D. Mich. 1993) ("In some instances, authority to file a competing plan may additionally motivate the debtor to more earnestly negotiate an acceptable consensual plan.").

40. Moreover, the filing of a competing plan will not prejudice the Debtors; they can propose the Lehman/Apollo Plan to see if creditors vote to support it. *See In re All Seasons*

Indus., Inc., 121 B.R. 1002, 1005 (Bankr. N.D. Ind. 1990) (decision to terminate exclusivity "does not sound a death knell for debtor's reorganization," rather it simply affords creditors the right to file plans as well; these rights coexist with the debtor's ongoing right to file a plan).

41. Because the Debtors have locked up with Lehman (and Apollo) to provide them with recoveries to which they are not entitled under the Bankruptcy Code, Midland should be free to propose and solicit acceptances of an alternative plan, even if in competition with the Lehman/Apollo Plan described by the Debtors on the first day of this case. In essence, the only way a plan could be confirmed in these cases is to terminate exclusivity since the Lehman/Apollo plan cannot be confirmed. Since exclusivity must be terminated for a confirmable plan to be proposed, termination should occur sooner rather than later.

D. The Court Should Establish a Schedule Prohibiting Any Party To Solicit Acceptances of the Debtors' Plan or Any Other Plan Spawned by the Lock-Up Agreement Until Has Filed a Plan and Disclosure Statement

42. If the Court terminates plan exclusivity, it is necessary to assure that Midland is given a fair chance to file a plan and disclosure statement so that its plan can proceed to confirmation without undue delay. To accomplish this, the Court should provide that a plan filed by Midland shall be scheduled for confirmation on a basis no less favorable than any competing plan, including the Lehman/Apollo Plan. While the Lock-Up Agreement was filed on the first day of the cases, the Lehman/Apollo Plan has yet to be filed (although it is due to be filed within a matter of days). Placing competing plans on a level playing field will allow fairness to all creditors and equity holders of these estates. Absent such relief, it would be necessary to engage in litigation concerning the many substantive defects in the Debtors' anticipated Plan. Such litigation is not only unnecessary (in light of the extremity of the facts set forth in this Motion), but would also force all concerned to incur needless delay and expense.

II. SUMMARY

43. Midland requests that this Court terminate the Debtors' exclusive right to file a plan and allow a plan of reorganization and disclosure statement to be filed by Midland that can thereafter proceed expeditiously toward confirmation in these cases.

44. The Debtors, under the direction of their CRO, filed these cases to implement a doomed strategy to the prejudice of $1.2 billion of the $1.4 billion of secured creditors, and all of mezzanine lenders and preferred shareholders. The Debtors are pursuing a plan to favor one creditor, Lehman, whose claims are dwarfed by the other creditors. Lehman is also the only creditor with an agreement with Apollo, the "out of the money" equity owner, to share its ill-gotten gains.

45. The Debtors' CRO apparently believes that he has no duty as a fiduciary to test the market to determine the highest and best deal for the constituencies of these estates. The Debtors' CRO instead believes that it is his duty as a fiduciary for all of the constituencies to exhaust the first 8 months of these bankruptcy cases with litigation pursuing a fatally flawed insider plan conceived as an attempt to circumvent the *LaSalle* decision, to the detriment of all of the other Creditors. Lehman stands as the lone creditor in support of the strategy. Continuing exclusivity to allow the Debtors to pursue the insider plan is a colossal waste of precious judicial time and the money of constituencies who soundly and resolutely reject the Lock-Up Agreement and its consequences.

46. To the contrary, success in these cases is in sight. If exclusivity is terminated, Midland could file a plan to be financed by Five Mile that is substantially better for all of the secured lenders and other constituencies (except Lehman). The plan envisioned by Midland would improve the returns for all constituents (other than Lehman and Apollo) and embrace at its core a process that seeks out higher and better offers. This is a distinct contrast to the Debtors'

desire to try to ramrod a plan on 85% of the creditors to force those creditors to accept depressed recoveries so value can go to Apollo and Lehman. Apollo and Lehman have absolutely no right to that value under any legitimate theory of law, logic or common sense.

47. The Debtors' rhetoric in these cases rings hollow and is unsupportable. They deny doing Apollo's bidding yet everything seems to fall in favor of Apollo and Lehman. Unfortunately, because the Debtors have demonstrated time and again that they intend to abuse their exclusivity, unless it is terminated, all of the other constituencies must first spend enormous amounts of time and money to deal with the Debtors strategy embodied in the Lock-Up Agreement which manifests the CRO's tortured view of fiduciary duty which favors only Apollo and Lehman.

48. This Court has the power to fix the problem. The request is not complicated: terminate plan exclusivity, allow Midland to file a plan and quickly allow the market to set the final price for a restructure to be implemented through a confirmed plan of reorganization. If Lehman wants to bid with a better plan for all constituents, it is free to do so. If Apollo wants to bid, it must first comply with *LaSalle* and proceed accordingly.

49. Most debtors would applaud this outcome – a quick chapter 11 process that tests the market and that yields the best deal for all constituents. Midland assumes that the Debtors will strenuously oppose moving in this direction because it would set in play a fair and open process that does not include a locked-in benefit for Apollo or Lehman. An open and market-based process runs contrary to Apollo's goals. However, it is the right thing to do and the Court should grant this Motion and terminate the Debtors' exclusivity.

This is not a solicitation of votes on a plan.

Local Rule 9013-1(a)

50. This pleading includes citations to the applicable rules and statutory authorities upon which the relief requested herein in predicated and a discussion of their application to this pleading. Accordingly Midland submits that this pleading satisfies Local Bankruptcy Rule 9013-1(a).

This is not a solicitation of votes on a plan.

CONCLUSION

WHEREFORE, Premises Considered, Midland respectfully requests that this Court enter an order (i) terminating exclusivity to permit Midland to propose and file a plan of reorganization (ii) terminating exclusivity to allow Midland to solicit acceptance a plan (after the approval of a disclosure statement), (iii) prohibiting the filing and solicitation of acceptances of the Lehman/Apollo Plan (or any other plan contemplated under the Lock-Up Agreement) until Midland has filed its plan and related disclosure statement, and (iii) granting such other relief as is necessary or appropriate.

Dated: August 30, 2010
New York, New York

HAYNES AND BOONE, LLP

/s/ Lenard M. Parkins

Lenard M. Parkins (NY Bar #4579124)
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- and –

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ATTORNEYS FOR MIDLAND LOAN SERVICES, INC.

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
INNKEEPERS USA TRUST, *et al.*,	)	Case No. 10-13800 (SCC)
Debtors.	)	Jointly Administered

ORDER GRANTING MIDLAND LOAN SERVICES, INC.'S
MOTION TO TERMINATE EXCLUSIVITY

Upon the motion (the "Motion)[11] of Midland Loan Services, Inc. ("Midland") in connection with the above-captioned debtors (collectively, the "Debtors") for entry of an order terminating exclusivity and it appearing that (i) the relief requested in the Motion is appropriate; (ii) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (iii) this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (v) notice of this Motion was appropriate under the particular circumstances and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Motion is GRANTED; and its is further

ORDERED that exclusivity is terminated and Midland is now permitted to propose and file a plan of reorganization; and it is further

ORDERED that exclusivity is terminated and Midland is now permitted to solicit acceptance of a plan (after the approval of a disclosure statement); and it is further

[11] Capitalized terms used, but not otherwise defined herein, shall have the meanings set forth in the Motion.

ORDERED that the filing and solicitation of acceptances of the Lehman/Apollo Plan (or any other plan contemplated under the Lock-Up Agreement) is prohibited until Midland has filed its plan and related disclosure statement; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____ ___, 2010
New York, New York

_____
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

NOT A SOLICITATION OF VOTES ON A PLAN

FIVE MILE CAPITAL PARTNERS

FIVE
MILE

THREE STAMFORD PLAZA, 9TH FLOOR
STAMFORD, CONNECTICUT 06901
TELEPHONE 203-905-0950
FACSIMILE 203-905-0954

August 29, 2010

Midland Loan Services, Inc.
10851 Mastin, 6th Floor, Overland Park, KS 66210
Attention: Kevin S. Semon
Vice President, Special Servicing Manager

Binding Commitment for the Acquisition of Innkeepers USA Trust

Five Mile Capital II Pooling REIT LLC ("Five MilePooling"), through its investment advisor Five Mile Capital Partners LLC (collectively, "Five Mile"), is pleased to submit this letter (this "Commitment Letter") to Midland Loan Services, Inc., as special servicer for the $825.4 million Fixed Rate CMBS Mortgage Loan (together with any successor special servicer, "Special Servicer"), which sets forth, among other things, our binding commitment (the "Commitment") to provide equity capital for the restructuring of the debt and equity of Innkeepers USA Trust ("Innkeepers") and its subsidiaries (collectively with Innkeepers, the "Company"), resulting in Five Mile indirectly owning 100% of the equity interests in the reorganized Company (the "Transaction"). The funding from our Commitment will be used to finance and otherwise implement a confirmed plan of reorganization to be filed by Special Servicer (the "Plan") acceptable to us in our reasonable discretion, which will provide for the treatment of claims and other terms outlined below and will otherwise contain terms and treatment of claims consistent with the applicable provisions of the Bankruptcy Code.

Five Mile is uniquely qualified to consummate the Transaction, given our substantial investment and the rights we have in certain indebtedness in Innkeepers. As you know, we have made available, subject to Court approval, debtor-in-possession financing to the Company in excess of $50 million. As a result, we are familiar with the Company's assets and operating performance, gleaned from our review of public filings and our own unassisted due diligence. We also have general expertise in the hospitality market and the extended stay lodging sector.

I. Value & Proposed Capital Structure

Innkeepers is a leading owner of upscale and extended stay hotel properties throughout the United States with interests in 73 hotels and approximately 10,000 rooms across 19 states. As with many other lodging assets, the Company experienced adverse asset performance as a result of the economic downturn and became unable to perform under its existing debt obligations leading to the Company's bankruptcy filing on July 19, 2010.

Given the economic environment's adverse impact on operating performance, reduced valuations within the lodging sector, required capital investments, and pending or existing franchise expirations, we believe the Company must resize its existing capital structure.

Our Commitment is based on a valuation of the Company of $1.04 billion and results in a final capital structure of $803.4 million in aggregate indebtedness and $236.6 million in new equity capital to be invested by us. The details of the reorganized capital structure for the Company are provided in Section IV below.

II. Capital Commitments; Guaranties

Subject to the conditions set forth above, we hereby submit this binding and irrevocable offer to provide $236.6 million of cash to fund the Transaction to be effectuated in accordance with the terms of this Commitment Letter on the effective date of the Plan. Five Mile's investment will be used to recapitalize the Company, and more specifically, will be used to pay down existing debt and provide funds for future property improvement work ("PIP"), furniture, fixtures, and equipment investments ("FF&E"), cash reserves and potential growth opportunities. We will provide the cash investment required to consummate the Transactions from our existing investment vehicles.

In addition, in connection with the contemplated restructured debt, Five Mile Pooling will enter into "bad boy" guaranties reasonably customary and otherwise reasonably standard for transactions of this type; provided, that Five Mile Pooling's maximum liability under each such guaranty shall not exceed 10% of the outstanding principal balance of the restructured loan from time to time for which such guaranty is provided.

In connection with the foregoing, we hereby confirm that we have available, and will have available at all times prior to consummation of the Transaction or the termination of the Commitment, investor commitments that exceed, in the aggregate, $240 million.

III. Plan Subject to Higher and Better Offers; Five Mile Free to Pursue Other Transactions

Subject to Court approval of the bid protections for Five Mile described in Section VI herein, Five Mile acknowledges that the Plan will be subject to higher and better offers for creditor treatment as may be reflected in competing reorganization plans filed with the Court. For avoidance of doubt, our providing this Commitment does not preclude us in any way from discussing alternate transactions, including competing plans of reorganization, or engaging in any discussions regarding providing financing or participating in any such alternate transactions (each, an "Alternate Transaction"); provided however, that we will not enter into a binding commitment with respect to, or otherwise consummate, any Alternate Transaction prior to the occurrence of a Termination Event (as defined in Section IX hereof).

IV. Restructuring of Debt and Equity of the Company – New Equity, Debt Forgiveness, & Cash Pay Downs

Based on our analysis of the Company's filings we believe that as of July 2010, the Company has approximately $1.482 billion in outstanding debt obligations of which approximately $1.055 billion is pre-petition obligations not related to Lehman ALI, Inc. ("Lehman") (i.e., exclusive of Lehman's

Floating Rate Mortgage Loan & Floating Rate Mezzanine Loan). Our Commitment contemplates a restructuring whereby the current debt is reduced through debt forgiveness and cash pay downs to approximately $803.4 million allowing non-Lehman pre-petition creditors to realize value for 73.023% of their outstanding obligations ($770.4 million of value realization on $1.055 billion of current indebtedness), calculated after giving consideration to the B-Notes to be purchased by us as proposed in this Commitment Letter and the C-Note to be issued to the lender under the Fixed Rate CMBS Mortgage Loan.[1] This recovery is materially better than the 66.3% maximum of value recovery for those same creditors described in the Plan Support Agreement advanced by Lehman (the "Lehman Plan"), with the potential for less (there is a ceiling but no floor on the creditor recovery and the Lehman Plan sponsor(s) benefits dollar-for-dollar to the extent recovery by the secured creditors is reduced). We believe that the amount realized on the Lehman's Floating Rate Mortgage Loan under our Commitment better reflects the value of the collateral supporting that obligation versus the premium value contemplated in the Lehman Plan which provides for a 90% recovery on Lehman's secured claim and appropriates the entirety of any residual value of the enterprise to Lehman. The higher value going to Lehman under its plan is realizable by Lehman only because there is a transfer of value from the non-Lehman prepetition creditors to Lehman (and Apollo Investment Corporation ("Apollo")) under the Lehman Plan.

[1] Any proceeds recovered from the Apollo Guaranty Litigation (as hereinafter defined) after reimbursement of all of the costs and expenses incurred by Special Servicer and Five Mile in connection therewith, will be shared equally by Five Mile and the holder of the C-Note (as a repayment in full of the C-Note). The "Apollo Guaranty Litigation" means Special Servicer's action against Apollo which is currently pending in the Supreme Court of the State of New York, which alleges, among other things that Apollo failed to honor its guaranty of certain property improvements relative to Innkeepers.

From and after the effective date of the Plan, Special Servicer shall continue to prosecute the Apollo Guaranty Litigation. Special Servicer and Five Mile shall select a law firm reasonably acceptable to each of them to prosecute the Apollo Guaranty Litigation. All decisions regarding the prosecution, settlement or other disposition of such litigation shall be made only with the consent of each of Five Mile and Special Servicer, which consent shall not be unreasonably withheld or delayed by either party.

For the avoidance of doubt, neither Special Servicer nor Five Mile will release Apollo from its guaranty either before confirmation of or as part of the Plan.

An illustration and an explanation of the debt restructuring portion of our Commitment are detailed below:

($ in millions)

	Today	*Debt Forgiveness*	*Adjusted Balance*	*Pay Down*	*Final Balance*
Five Mile DIP	$50.8	$0.0	$50.8	-$50.8	$0.0
Lehman DIP	$17.0	$0.0	$17.0	-$17.0	$0.0
Fixed Rate CMBS Mortgage Loan	$825.4	-$225.4	$600.0	-$66.4	$533.6
Floating Rate Mortgage Loan	$238.5	-$86.8	$151.7	-$16.8	$134.9
Floating Rate Mezzanine Loan	$121.0	-$121.0	$0.0	-$0.6	$0.0
Anaheim Mortgage Loan	$13.7	-$3.7	$10.0	-$1.1	$8.9
Anaheim Mezzanine Loan	$21.3	-$21.3	$0.0	-$0.1	$0.0
Capmark Mission Valley CMBS Mortgage Loan	$47.4	-$12.9	$34.5	-$3.8	$30.7
Capmark Garden Grove CMBS Mortgage Loan	$37.6	-$10.3	$27.3	-$3.0	$24.3
Capmark Ontario CMBS Mortgage Loan	$35.0	-$9.6	$25.4	-$2.8	$22.6
Merrill Lynch Washington D.C. CMBS Mortgage Loan	$25.6	-$7.0	$18.6	-$2.1	$16.5
Merrill Lynch Tysons Corner CMBS Mortgage Loan	$25.2	-$6.9	$18.3	-$2.0	$16.3
Merrill Lynch San Antonio CMBS Mortgage Loan	$24.2	-$6.6	$17.6	-$2.0	$15.6
Allocated Value of B-Notes[1]	$0.0	$0.0	$6.6	-$6.6	$0.0
Allocated Value of C-Note[1]	$0.0	$0.0	$12.1	-$12.1	$0.0
Total Debt	**$1,482.7**	**-$511.5**	**$989.9**	**-$187.2**	**$803.4**
DIP Retirement				$67.8	$67.8
Pre-Petition Creditor Pay downs				$100.7	$100.7
Fixed Rate CMBS Mortgage Special Servicer Fee				$4.0	$4.0
Funding of FF&E Reserve			$13.8		$13.8
Pre-funding of Future PIP Work			$15.0		$15.0
Additional Cash on Balance Sheet[2]			$16.6		$16.6
Purchase of B-Notes[1]				$6.6	$6.6
Payments on C-Note[1]				$12.1	$12.1
New Cash Equity	**$0.0**	**$0.0**	**$45.4**	**$191.2**	**$236.6**
Total Capital Structure	**$1,482.7**	**-$511.5**	**$1,035.3**	**$4.0**	**$1,040.0**

(1) The B-notes represent an interest in the equity waterfall of the new capital structure that is subordinate to a 2.0x multiple on the Investor's Investment. Other than the $12.1 million payment on the C-Note, the C-Note will not receive any payments unless there is a recovery on the Apollo Guaranty Litigation, in which event the holder of the C-Note will receive 50% of the net proceeds recovered from such litigation.

(2) Includes amount allocated to pay unsecured creditors (other than holders of deficiency claims) their pro rata share of $500,000.

Cash Proceeds & Uses

Our Commitment contemplates that the cash investment of $236.6 million will be used as follows:

- Repayment of the Five Mile and Lehman DIP in the amount of $67.75 million
- Pay down of Pre-Petition Mortgage lenders, after debt forgiveness, by $100 million
- Funding of $28.8 million of FF&E and PIP reserves to cover 2011 FF&E and future PIP work
- Funding of $16.6 million of additional cash on the post-confirmation balance sheet
- $6.6 million for us to purchase the B-Notes issued to holders of deficiency claims based upon a percentage of $256.5 million in B-Notes[2] subordinate to a 2.0x multiple on our investment

[2] $112.7 of deficiency on the Fixed Rate CMBS Mortgage Loan is allocated to C-Note.

- $12.1 million to make the following payments on the C-Note issued to the lender under the Fixed Rate CMBS Mortgage Loan: (i) $2.9 million based upon a percentage of the $112.7 million C-Note and (ii) $9.2 million as additional consideration for Five Mile's receipt of 50% of the net proceeds, if any, from the Apollo Guaranty Litigation (as defined in Footnote 1 hereto)
- Payment on non-deficiency unsecured claims in the amounts of: $605,000 to Floating Rate Mezzanine Loan lenders; $106,500 to Anaheim Mezzanine Loan lenders; and $500,000 to trade unsecured creditors
- Payment of fees to the Special Servicer of the Fixed Rate CMBS Mortgage equal to $4,000,000 as complete consideration for effecting the restructuring transactions

Debt Forgiveness & Pay Downs

- Fixed Rate CMBS Mortgage Loan: Reduction to $600.0 million and a cash pay down of $66.4 million to reduce the outstanding balance to $533.6 million. Company's issuance of B-Note to lender, in an original principal amount of $112.7 million, which note we agree to purchase immediately for $2.90 million in cash. Company's issuance of C-Note to the lender, in an original principal amount of $112.7 million, on which we agree to make the following payments (collectively, the "Initial C-Note Payments"): (i) a payment of $2.9 million and (ii) a payment of $9.2 million as consideration for receipt by Five Mile of fifty percent (50%) of any net proceeds of the Apollo Guaranty Litigation, if any. The C-Note shall not receive any payments other than the Initial C-Note Payments and fifty percent (50%) of any net proceeds of the Apollo Guaranty Litigation, if any.
- Floating Rate Mortgage Loan: Reduction to $151.7 million and a cash pay down of $16.8 million to reduce the outstanding balance to $134.9 million. Company's issuance of B-Notes to lender, which notes we agree to purchase immediately for $2,831,438 in cash, of which $605,000 shall be subordinated and paid over to the Floating Rate Mezzanine Loan. Please note our estimates for this mortgage pool are based on *de minimis* information as compared with some of the other properties and therefore will require extra diligence.
- Floating Rate Mezzanine Loan: Payment of $605,000 as described above. Debt cancelled.
- Anaheim Mortgage Loan: Reduction to $10.0 million and a cash pay down of $1.1 million to reduce the outstanding balance to $8.9 million. Company's issuance of B-Notes to lender, which notes we agree to purchase immediately for $201,406 in cash, of which $106,500 shall be subordinated and paid over to the Anaheim Mezzanine Loan.
- Anaheim Mezzanine Loan: Payment of $106,500 as described above. Debt cancelled.
- Capmark Mission Valley CMBS Mortgage Loan: Reduction to $34.5 million and a cash pay down of $3.8 million to reduce the outstanding balance to $30.7 million. Company's issuance of B-Notes to lender, which notes we agree to purchase immediately for $0.3 million in cash.
- Capmark Garden Grove CMBS Mortgage Loan: Reduction to $27.3 million and a cash pay down of $3.0 million to reduce the outstanding balance to $24.3 million. Company's issuance of B-Notes to lender, which notes we agree to purchase immediately for $0.3 million in cash.
- Capmark Ontario CMBS Mortgage Loan: Reduction to $25.4 million and a cash pay down of $2.8 million to reduce the outstanding balance to $22.6 million. Company's issuance of B-Notes to lender, which notes we agree to purchase immediately for $0.2 million in cash.
- Merrill Lynch Washington D.C. CMBS Mortgage Loan: Reduction to $18.6 million and a cash pay down of $2.1 million to reduce the outstanding balance to $16.5 million.

Company's issuance of B-Notes to lender, which notes we agree to purchase immediately for $0.2 million in cash.

- Merrill Lynch Tysons Corner CMBS Mortgage Loan: Reduction to $18.3 million and a cash pay down of $2.0 million to reduce the outstanding balance to $16.3 million. Company's issuance of B-Notes to lender, which notes we agree to purchase immediately for $0.2 million in cash.
- Merrill Lynch San Antonio CMBS Mortgage Loan: Reduction to $17.6 million and a cash pay down of $2.0 million to reduce the outstanding balance to $15.6 million. Company's issuance of B-Notes to lender, which notes we agree to purchase immediately for $0.2 million in cash.
- Unsecured trade creditors (not including holders of deficiency claims) that are not otherwise paid pursuant to a "first day" order, will receive a share of a cash allocation of $500,000.
- All equity interests in the Company, including common and preferred stock, will be cancelled, and no distributions will be made on account of such interests. The Plan will provide for an equity incentive program for management of the reorganized Company.

V. Proposed Debt Rates, Maturities, Extensions, Amortization, & Release Prices

The Commitment includes the following terms for the restructured debt:

- Fixed Rate CMBS Mortgage Loan: A proposed interest rate of 6.71% on the A-Note and no change to the existing maturity date of July 9, 2017. During the first 48 months after the confirmation of the Plan, interest only will be payable monthly and amortization will begin 48 months after the confirmation of the Plan and will be based on a 30 year amortization schedule. Release prices will be established and properties can be released at 115% of the allocated loan amount based on the face amount of the A-Note, so long as the debt service coverage ratio thereunder, after giving effect to such release, is no worse than such ratio prior to such release. The loan is subject to prepayment at par without penalty. Allocated FF&E of $7,840,067.
- Floating Rate CMBS Mortgage Loan: A proposed interest rate of Libor + 2.05%, with an initial maturity date of July 9, 2015, two one-year extension options, at the borrower's option, and not subject to any financial covenants. Release prices will be established and properties can be released at 115% of the allocated loan amount, so long as the debt service coverage ratio thereunder, after giving effect to such release, is no worse than such ratio prior to such release. The loan is subject to prepayment at par without penalty. Allocated FF&E of $3,510,782.
- Anaheim Mortgage Loan: A proposed interest rate of 5.41% and a maturity date of July 9, 2017. Amortization will begin 48 months after the confirmation of the Plan and will be based on a 30 year amortization schedule. The loan is subject to prepayment at par without penalty. Allocated FF&E of $407,400.
- Capmark Mission Valley CMBS Mortgage Loan: A proposed interest rate of 5.98% and a maturity date of July 9, 2017 as compared to the original maturity date of November 11, 2016. The loan is subject to prepayment at par without penalty. Allocated FF&E of $446,681.
- Capmark Garden Grove CMBS Mortgage Loan: A proposed interest rate of 5.98% and a maturity date of July 9, 2017 as compared to the original maturity date of November 11,

2016. The loan is subject to prepayment at par without penalty. Allocated FF&E of $357,674.

- Capmark Ontario CMBS Mortgage Loan: A proposed interest rate of 5.98% and a maturity date of July 9, 2017 as compared to the original maturity date of November 11, 2016. The loan is subject to prepayment at par without penalty. Allocated FF&E of $456,855.
- Merrill Lynch Washington D.C. CMBS Mortgage Loan: A proposed interest rate of 6.03% and a maturity date of July 9, 2017 as compared to the original maturity date of October 1, 2016. The loan is subject to prepayment at par without penalty. Allocated FF&E of $266,428.
- Merrill Lynch Tysons Corner CMBS Mortgage Loan: A proposed interest rate of 5.98% and a maturity date of July 9, 2017 as compared to the original maturity date of October 1, 2016. The loan is subject to prepayment at par without penalty. Allocated FF&E of $235,718.
- Merrill Lynch San Antonio CMBS Mortgage Loan: A proposed interest rate of 6.03% and a maturity date of July 9, 2017 as compared to the original maturity date of October 1, 2016. The loan is subject to prepayment at par without penalty. Allocated FF&E of $278,395.

VI. Offer Structure and Protections

As stated, the Transaction will be implemented by a recapitalization of the Company through the Plan. Since the Company has rejected our request to perform due diligence and has expressed no real interest in engaging us in meaningful discussions regarding a potential transaction in lieu of continuing on with the Lehman Plan, it will be necessary for Special Servicer or another party in interest to seek and obtain a bankruptcy court order terminating the Company's plan exclusivity period in order for Special Servicer to file the Plan. Assuming exclusivity is so terminated, we require that stalking horse protection be immediately sought by Special Servicer from the Court, including the following: (i) a break-up fee of $10 million in favor of Five Mile (the "Break-Up Fee") if an alternative Chapter 11 plan financed by a different party is confirmed by the Court and consummated; (ii) a first over-bid in the competing plan in the form of additional capital into the Company in the minimum amount of $25 million cash (inclusive of amount allocable to pay the Break-Up Fee, which shall only be payable from the cash realized from the first overbid), with subsequent over-bids in the form of additional capital into the Company in minimum $10 million increments of additional cash (or additional debt on identical terms as described in our Commitment), and (iii) a reimbursement of all of our legal fees and expenses incurred in connection with this offer and its confirmation and consummation (including due diligence fees and expenses) in an amount not to exceed $2,000,000. Special Servicer confirms its agreement with such terms.

Special Servicer confirms that, other than the sale of equity interests in the reorganized Company, the Plan will not contemplate or provide for a sale of the Company or any of its assets pursuant to section 1129(b)(2)(a)(ii) or (iii) or section 363 of the Bankruptcy Code. As such, no holder of a lien on any asset of the Company shall be permitted to credit bid its claim as part of the Plan. The confirmation of the best plan of reorganization providing for the highest and best return to creditors is contemplated, subject to the protections being granted to Five Mile as set forth above in this Section VI. In lieu of participating in the recapitalization provided in the Plan, the Plan should provide that each secured creditor shall have the option to take ownership of its collateral in full satisfaction, settlement, release and exchange for its claim(s) against the Company, in which case there shall be an attendant adjustment to the consideration hereunder.

VII. Strength of the Plan

We believe the Plan (consistent with the terms of this Commitment Letter) is (i) superior to the Lehman Plan, (ii) beneficial to all creditors, not just Lehman, and (iii) in the best interests of the Company and its bankruptcy estates. The Plan values the Company at $1.04 billion, which is higher than the valuation of $915 million in the Lehman Plan. The Plan provides for approximately $89.1 million in additional recovery value for the Non-Lehman Pre-Petition creditors and $187.2 million in cash pay downs of indebtedness, including retirement of $67.75 million of DIP financing, the purchase of the B-Notes for $6.6 million and payments on the C-Note of $12.1 million. Further, there is substantially higher certainty and less execution risk with the Plan, financed by our Commitment, as it will provide for the exit financing component critical to the success and emergence of Innkeepers from bankruptcy. The Lehman Plan does not include a commitment for $75 million of exit financing, which is required for Innkeepers to successfully emerge from bankruptcy.

We believe the Plan also provides additional stability for the Company as compared to the Lehman Plan by providing approximately $28.8 million in cash reserves to fund future FF&E (which reserves shall be held by the Master Servicer of the Fixed Rate CMBS Mortgage Loan) and PIP investments and an additional $16.6 million in general cash liquidity (includes amount allocated to pay the unsecured creditors – other than holders of deficiency claims) to manage seasonality within the business, cover operating or interest shortfalls should they occur, and provide funds to pay administrative and priority expenses upon emergence. Our Commitment's suggested amortization of the Fixed Rate and Anaheim Mortgage Loans, after a 48 month period will allow the Company to reach a more normalized level of operating performance. We are ready to move forward and have all the resources, including available funds, to conclude the transactions outlined in this Commitment Letter.

VIII. Special Servicer Covenants

In consideration for our Commitment, Special Servicer hereby covenants and agrees to (a) perform its undertakings set forth in the second paragraph of Section VI above, (b) use its best efforts to seek a bankruptcy court order to terminate the Company's plan exclusivity period, and (c) upon termination of the Company's plan exclusivity period, to (i) immediately thereafter file a motion seeking approval of the bid protections identified above and file the Plan consistent with the terms of this Commitment Letter, (ii) take all necessary steps to obtain an order approving a disclosure statement in respect of the Plan, (iii) thereafter solicit votes for the Plan, and (iv) thereafter take all necessary steps to seek confirmation and effectiveness of the Plan. All orders and filings by Special Servicer relating to the Plan shall be subject to our prior review and approval, which approval shall not be unreasonably withheld or delayed.

IX. Termination of Commitment

This Commitment Letter outlines only some of the essential terms regarding the proposed Transaction, is not all-inclusive and does not purport to summarize or contain all of the conditions, covenants, representations, warranties and other provisions which would be contained in definitive documentation for the Transaction.

In addition, this Commitment Letter shall terminate and be of no further force or effect, and we and you shall no longer be obligated with respect to our Commitment (and, in such event, we shall not be entitled to any of the bid protections in favor of us, including, without limitation, those set forth in Section VI herein) and other agreements set forth herein (including, without limitation, our agreement with respect to Alternate Transactions set forth in Section III hereof), upon the earliest to occur of the following (each, a "Termination Event"):

- the occurrence of any material adverse condition, change in or material disruption of conditions in the financial, banking, capital or hospitality markets and extended stay lodging sector that, in our reasonable judgment, would impair the viability or success of the Transaction;
- the occurrence of any condition, change or development that could reasonably be expected to have a material adverse effect on the business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Company;
- the Company fails to provides us with unfettered and reasonable access to its properties, books and records, subject to a non-disclosure agreement for a period of thirty (30) days ("Due Diligence Access Period"), such period to commence by September 15, 2010;
- our determination, on or prior to the last day of the Due Diligence Access Period, that the results of our due diligence investigation with respect to mortgage pools (and underlying properties) are not satisfactory to us in our sole discretion;
- our inability to negotiate and execute all related documents (including customary representations, warranties, covenants, conditions, and indemnities) necessary to effectuate the Transaction, in each case in form and substance satisfactory to us in our reasonable discretion;
- any breach by you of, or non-compliance with, the covenants set forth in Section VIII herein;
- your failure, by October 15, 2010 (or such later date to which we shall agree in writing), to (a) obtain a bankruptcy court order terminating the Company's plan exclusivity period, (b) file a motion to approve bid protections in favor of us (including, without limitation, those set forth in Section VI herein) with respect to the Plan, or (c) file the Disclosure Statement and Plan;
- the Court's failure to (a) approve your motion to approve protections in favor of us (including, without limitation, those set forth in Section VI herein) before October 27, 2010 (or such later date to which we shall agree in writing), (b) approve the Disclosure Statement for the Plan on or before November 15, 2010 (or such later date to which we shall agree in writing), or (c) enter a final order approving the Plan (acceptable to us in our reasonable discretion) by December 15, 2010 (or such later date to which we shall agree in writing);
- the Court's confirmation of the Lehman Plan; or
- mutual agreement of Special Servicer and Five Mile.

Time is of the essence with respect to the Termination Events.

X. Miscellaneous

All notices, requests, claims, demands and other communications hereunder shall be given (and shall be deemed to have been duly received if given) by hand delivery in writing or by facsimile transmission with confirmation of receipt, as follows:

if to Five Mile:

Three Stamford Plaza
301 Tresser Boulevard, Ninth Floor
Stamford, CT 06901
Attention: James G. Glasgow, Jr.
Email: jglasgow@fivemilecapital.com
Facsimile: (203) 905-0954

if to Special Servicer:

Midland Loan Services, Inc.
10851 Mastin, 6th Floor
Overland Park, KS 66210
Attention: Kevin S. Semon
Email: kevin.semon@midlandls.com
Facsimile: (913) 253-9723

This Commitment Letter, the rights of the parties, and all actions arising in whole or part under or in connection herewith will be governed by and construed in accordance with the laws of the State of New York.

This Commitment Letter constitutes the entire agreement between the parties and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings and agreements, whether written or oral, between you (or the Company), on the one hand, and us, on the other hand. No modification or waiver of any provision hereof shall be enforceable unless approved by you and us in writing. Neither you, on the one hand, nor us, on the other hand, is relying upon any statement or representation made by or on behalf of the other, except as expressly provided in the Commitment Letter.

We are prepared to enter into a transaction on the terms set forth herein. Upon receipt of a fully executed counterpart to this Commitment Letter, both parties agree to negotiate in good faith regarding the implementation of the Transaction contemplated in this Commitment Letter, including engaging in the preparation and negotiation of definitive documents, and Special Servicer agrees to move forward with its undertakings described in Section VIII herein.

This Commitment Letter shall be considered withdrawn and can no longer be accepted if we have not received from you, in accordance with the notice provisions herein, a fully-executed counterpart to this Commitment Letter on or before **August 30, 2010, at 5:00 PM (Eastern time)**, unless we extend such deadline in writing.

Remainder of Page Intentionally Blank
Signature Pages to Follow

Should you have any questions regarding this Commitment Letter, please do not hesitate to contact James Glasgow (jglasgow@fmcp.com) or Al Nickerson (anickerson@fmcp.com) at (203) 905-0950.

Sincerely yours,

Five Mile Capital II Pooling REIT LLC,

By: Five Mile Capital Partners LLC,
its manager

By: _____
James G. Glasgow
Portfolio Manager and Managing Director

Acknowledged and Agreed:

Midland Loan Services, Inc.,
as Special Servicer for Bank of America, N.A., as Trustee for the Registered Holders of LB-UBS Commercial Mortgage Trust 2007-C6, Commercial Mortgage Pass-Through Certificates, Series 2007-C6

By: _____

Name: Kevin C. Donahue
Title: Senior Vice President
Servicing Officer

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

IN RE:	:	
	:	Chapter 11
PLIANT CORPORATION, et al.,	:	
	:	Case No. 09-10443 (MFW)
Debtor.	:	

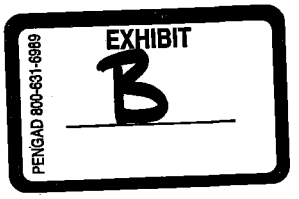
. . . . . .

Wilmington, Delaware
June 30, 2009
9:36 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors':	James Bendernagel, Jr., Esquire Ronald Flagg, Esquire Larry Nyhan, Esquire Sidley, Austin, LLP
For Apollo:	John Lynch, Esquire Phil Mindlin, Esquire Doug Mayer, Esquire Wachtell, Lipton, Rosen & Katz Derek Abbott, Esquire Morris, Nichols, Arsht & Tunnell, LLP
For the Committee:	Sharon L. Levine, Esquire Thomas A. Pitta, Esquire Alison Kowalski, Esquire Lowenstein, Sandler, P.C.
For the First Lien Committee:	Curtis Mechling, Esquire Kristopher Hansen, Esquire Strook & Strook & Lavan, LLP
For Wells Fargo:	Heike Vogel, Esquire Arent, Fox, LLP



For Merrill Lynch Bank:	John Strock, Esquire Womble, Carlyle, Sandridge & Rice, PLLC
For ACE:	Dana Monzo, Esquire White & Williams, LLP
For First Line Committee:	Mike Romanczuk, Esquire Richards, Layton & Finger, P.A.
VIA TELEPHONE:	
For the Debtors':	D'Lisia Bergeron, Esquire Sidley, Austin, LLP
For Wilmington Trust: Company:	Susan Johnston, Esquire Covington & Burling, LLP
For Barclays:	Stephen Pedone Stephen Pedone (Client)
Court Recorder:	Laurie Capp
Transcription Service:	Perfect Pages Transcription, Inc. 18 Tuckerton Road Shamong, NJ 08088 www.perfecttranscripts.com (609) 654-8880

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and say, Judge, there's really a question of suppressed value here. We don't know where the values are and, therefore, we ought to have some kind of a process. That's just not consistent with the record, Your Honor.

With that -- unless Your Honor has questions, I'll yield.

THE COURT: No, thank you.

MR. NYHAN: Thank you.

THE COURT: Let's take five minutes and then I'll render my ruling.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

(Recess from 5:02 p.m. to 5:09 p.m.)

THE CLERK: All rise.

THE COURT: All right. Before me is the Creditors' Committee Motion to Terminate Exclusivity to permit the Court and Creditors to consider an alternative plan. The Court has the ability to terminate exclusivity for cause. I don't have to find a breach of fiduciary duty, and based on the testimony here I find that the Debtor has not breached its fiduciary duty. The Debtor and its management and advisors followed an appropriate process of evaluating the deal and plan that they had negotiated with the first-lien holders in comparison with the Apollo Plan and believed that their Plan is better. That is not a breach of fiduciary duty. They did everything that was required of them, however, we're in bankruptcy, we're not in a proxy fight or other fight under Delaware State law. The

Court's discretion to terminate exclusivity is broad, but I take that as very, very important. The Debtors right to propose a plan to run its case is a very important right in bankruptcy. It should not be cut off at the knees except in extreme circumstances or in unique circumstances at least. The typical situation where a Creditors' Committee is simply seeking leverage or another Creditor group is simply seeking leverage to negotiate a plan that is not an appropriate case to terminate exclusivity. I am fully familiar both in practice and as a Judge with the various dynamics that are going on behind the scenes and except in hearings like this, don't come to the fore.

I need to find a cause. I need to find a reason to eliminate the Debtors right to run its case. I agree that the Global Ocean and LaSalle cases are not applicable. This is not a situation where the shareholders, the old equity holders, are being given all the equity in the case, but I think that the case is sufficiently similar to that because all of the equity is being given to one Creditor group. That Creditor group professes that it would prefer to have all the equity rather than have some $89 million in cash and $236 million in secured notes, that gives the Court some pause because I know in the marketplace, secured debt and cash is better than stock unless the value of the entity has an upside. And if that is the case, if there is an upside there,

then I think that the other Creditor constituents have a right to test that and to see whether or not there is a plan that can give them some value without eliminating or otherwise violating the rights of the first-lien holders. But I think the best way to test that is under Section 1129 and to allow the Creditors a choice of pressing two plans. This is not a situation where there's a hostile takeover nor a situation where a Creditor group is just simply trying to get leverage. The Committee has come in with a, I hate the term, but a fully baked plan to use their argument. There are some serious concerns the Court has about the feasability of that, but I think in the first instance it is up to the Creditors to evaluate that and to determine whether or not they are willing to take the risk of proceeding with that, but that can be tested both by the Creditors and by the Court in a confirmation process. I do rely in large part on the Creditors' Committee's evaluation in this situation, while recognizing that they really are representing only one constituency and that is Unsecured Creditors, and that the Debtor has a fiduciary duty to all constituents, And, again, I do not fault the Debtor in the manner in which they have approached this. I just think that under the unique circumstances of this case, we should let those people with a stake in this case make their decision. And I fully recognize that when we come down to confirmation, only one of these

Plans be confirmable, but both of them may be confirmable. And in that instance, I will, again, look to the Creditors to decide which is the best place. So I will grant the Committee's Motion and terminate exclusivity.

Now, I know that we had some dates the parties were looking to. Do you need to review that again or do we need to speak with Ms. Capp about what dates? I think we had tentatively scheduled some dates.

MR. NYHAN: Your Honor, I didn't know of a date. I know that -- I think July 24th had been --

MR. ABBOTT: Your Honor, Derek Abbott, for Apollo. My recollection was that there was an omnibus hearing on the 20th but the Court had indicated that there was time on the 24th and the parties would agree to a couple of days of shortening notice of a disclosure statement hearing to be able to do it on the 24th. We had --

THE COURT: Can you shorten that? I just had another e-mail today about that. Can we shorten that notice?

UNIDENTIFIED SPEAKER: I believe you can, Your Honor.

MR. ABBOTT: Let's check, Your Honor.

THE COURT: I know it has to be 25 days. I guess it's 9,006 I have to look to read that --

UNIDENTIFIED SPEAKER: It is, Your Honor. I'm at (indiscernible) C.

THE COURT: 2003(a), I think this notice is under 2002(b) so I think it can be shortened.

MR. ABBOTT: I believe that's correct, Your Honor.

THE COURT: Okay.

MR. ABBOTT: And I think the 24th, although I must admit I forget exactly the time that Ms. Capp suggested would be available.

THE COURT: She's got us down for the 24th at 11:30. So that would be for both disclosures statements?

MR. NYHAN: Yes. And, Your Honor, just with some silence. We need to talk to our client about whether we're going to seek an appeal of this. And I just don't -- that date will work for us, but I don't want to surprise the Court if we --

THE COURT: Understood.

MR. NYHAN: -- weren't to come in.

THE COURT: Understood.

MR. ABBOTT: Your Honor, I think that's all we have from our side for today.

THE COURT: Okay. All right. You'll get me a Form of Order, somebody?

UNIDENTIFIED SPEAKER: Yes, Your Honor.

MR. ABBOTT: We will, Your Honor. We'll circulate it and submit it under certificate.

THE COURT: All right.

MR. NYHAN: Your Honor, we also have, although I suppose it would be best to pick this up tomorrow, but I think we also had a Lease Motion. The Solicitation Motion and disclosure statement we'll obviously go over with the -- to the 24th.

THE COURT: Well, let me see what our last matter is. We handled item 7. You're talking about item 8, the Debtors' new headquarters lease.

MR. NYHAN: Yes, Your Honor.

THE COURT: Well, do we want to postpone that given the -- my decision on the Exclusivity Motion?

MR. NYHAN: I think, Your Honor, the Debtors would like to proceed. We think we need the space regardless, but I know that we had time tomorrow. We're happy to come in tomorrow morning.

THE COURT: Well, do the parties want to talk or --

MR. MAYER: We can certainly talk, Your Honor. I believe Your Honor's aware that Apollo opposed a limited objection with respect to that move.

THE COURT: Yes.

MR. MAYER: And I'm a bit surprised that the Debtors' want to pursue it, but if we can consult with them and they want to pursue it, they'll pursue it. Then Your Honor will decide.

THE COURT: All right. Why don't you talk and we

can come back --

MS. LEVINE: Your Honor, the other issue is we submitted a Proposed Form of Order with the Motion. We'll circulate that among the parties right now also and see if there are comments to it as well.

THE COURT: Okay.

MS. LEVINE: Thanks.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: Tomorrow we're starting at -- we can start 9:30 if you like.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: All right. We'll stand adjourned then.

(Court adjourned at 5:20 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/April J. Foga July 7, 2009
April J. Foga, CET, CCR, CRCR

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN THE MATTER OF	)	
	)	Case No.: 09-13654
TCI2 HOLDINGS, LLC,	)	
	)	Camden, New Jersey
Debtor.	)	August 27, 2009
	)	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JUDITH H. WIZMUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:
CHARLES A. STANZIALE, JR., ESQ.
LISA S. BONSALL, ESQUIRE
McCarter & English
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102

For the Trustee:
JEFFREY M. SPONDER, ESQUIRE
Office of the U.S. Trustee
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Suite 2100
Newark, New Jersey 07102

For the Ad Hoc Committee:
KRISTOPHER HANSEN, ESQUIRE
EREZ GILAD, ESQUIRE
CURTIS MECHLING, ESQUIRE
JENNIFER ARNETT, ESQUIRE
Stroock & Stroock & Lavan, LLP
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New York, New York 10038

KENNETH A. ROSEN, ESQUIRE
JASON C. DIBATTISTA, ESQUIRE
Lowenstein Sandler, P.C.
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Roseland, New Jersey 07068

For TER:
MICHAEL WALSH, ESQUIRE
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10153

APPEARANCES (continued):

For TER:	ANGELA ZAMBRANO, ESQUIRE Weil, Gotshal & Manges 200 Crescent Court Suite 300 Dallas, Texas 75201
For Donald Trump:	DAVID M. FRIEDMAN, ESQUIRE PAUL MAINARDI, ESQUIRE Kasowitz, Benson, Torres & Friedman, LLP 1633 Broadway New York, New York 10001
For Beal Bank:	BRIAN W. HOFMEISTER, ESQUIRE Teich Groh 691 State Highway 33 Trenton, New Jersey 08619 CHARLES R. GIBBS, ESQUIRE SCOTT L. ALBERINO, ESQUIRE Akin, Gump, Strauss, Hauer & Feld, LLP Two Commerce Square 2001 Market Street Suite 4100 Philadelphia, Pennsylvania 19103
For U.S. Bank:	JAMES FARRAH, ESQUIRE Kelley, Drye & Warren, LLP 333 West Wacker Drive Chicago, Illinois 60606
For the Former Shareholders:	JERROLD S. KULBACK, ESQUIRE Archer Greiner, P.C. One Centennial Square Haddonfield, New Jersey 08033
For New Century Investment Partners, LLP:	MALANI J. CADEMARTORI, ESQUIRE Sheppard, Mullin, Richter & Hampton 30 Rockefeller Plaza New York, New York 10112

APPEARANCES (continued):

For Coastal Marina and Coastal Development, LLC:	VINCENT F. PAPALIA, ESQUIRE Saiber, LLC One Gateway Center 13th Floor Newark, New Jersey 07102 BRUCE R. ZIRINSKY, ESQUIRE Greenburg Traurig, LLC 200 Park Avenue New York, New York 10166
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in opposition to the motion to terminate exclusivity? Brief reply, if you choose.

MR. HANSEN: I couldn't be brief, Your Honor, because there's an awful lot to say. So if you have questions, I'm happy to answer them, but rather than -- there's -- there's a lot to respond to. But I think Your Honor's questions were very germane. I think you get it. And if you have questions, I'm happy to respond to them. But otherwise, I won't take -- burden the Court.

THE COURT: That's fine. Appreciate it. Let me take five minutes, and I will issue a decision on the motion, and then we'll go right to the examiner issue.

(Recess)

COURTROOM DEPUTY: All rise.

THE COURT: Please be seated. Let me thank all parties for a very thorough presentation of the issues. Let me, for the record, reflect the basic facts upon which I rely. We understand, of course, that these cases were filed on February 17, 2009. The basic capital structure of the debtors includes a $486 million first lien position held by Beal Bank and secured noteholders of upwards of $1.25 billion. The debtors claim in their disclosure statement that the entire enterprise value of these debtors is about $456 million.

At some point after the filing of the petitions, the debtors determined to ask two main constituencies, Beal Bank

and the second lienholders -- I don't know if they directed an inquiry to Mr. Trump himself, the record's not clear on that -- to submit offers. Indeed their financial advisor Lizard shopped the assets, as well, without result. The process of each of those sides, the Beal/Trump side and the second lienholders -- the noteholders, we'll call them -- went forward. And when the debtors extended exclusivity expired on August 3rd -- the first exclusivity period expired June 17th -- and was extended by 45 days, there was a plan submitted by the debtors, the Beal/Trump, the debtors, had apparently considered the two options and chose that plan.

That plan, the so-called Beal/Trump plan, envisions a restated credit agreement for Beal Bank, extending maturity by Beal Bank's consent to 2020. That's an eight-year extension, with a reduced interest rate, presumably below market, unknown in this record, in any event, as well to infuse the debtor with $100 million, in exchange for the issuance of all of the equity in the debtors -- in the reorganized debtors, with no recovery to the noteholders or unsecured creditors.

The noteholders, the Ad Hoc Committee of noteholders, filed this motion seeking to terminate exclusivity. With that motion, they filed under seal, appropriately so. And we understand that that filing, obviously, is not in violation of the exclusivity rights of the debtor in the form that it was filed. But it does -- no one has contested the opportunity to

discuss the provisions of that plan, notwithstanding the exclusivity of the debtors still in place. Their plan contemplates the sale of the marina to Coastal Development for $75 million.

There is a history of a contract between the debtors and Coastal Development to sell to -- to Coastal Development the marina. We need not detain the record on this, but the deal contemplates a dismissal of the Florida litigation as well, to provide $175 million into the debtor, with portions of that amount going to Beal Bank. I'm not absolutely clear on how that would work, but, in any event, through a rights offering.

To accredited investors who are noteholders, that rights offering would be backstopped by a group of noteholders with a 5 percent carve out, if you will, of the equity in the debtors to the pool of unsecured creditors small cash pool, and payment of the Beal Bank debt in cash and by re-modified terms of the contractual arrangement. One could quibble with the way that I have characterized those plans, but, hopefully, I've conveyed the general outline of them.

Let me start with the basic proposition, of course, that -- and I think both sides would agree that the debtors exclusive right under 1121 to propose a plan during the exclusivity period is certainly important and must be safeguarded; cannot be disturbed by creditors. And we've seen

lots of cases like this who seek to gain leverage, to -- who offer hypothetical plans, or who seek to disrupt the debtors plan. And the burden is clearly on the movant to establish the requisite cause under 1121(d) for termination of exclusivity.

While the concept of enlargement and termination is flexible, indeed, there is a prospect that the termination of exclusivity could disrupt the so-called, quote, delicate balance, unquote, created by Congress between the debtors' right to have a first shot at submitting a plan, and the creditors' opportunities to prepare a plan. Indeed, as counsel for Beal Bank has pointed out, there is opportunity to -- or perhaps, Mr. Friedman, I'm not sure who -- to inject a level of uncertainty in the process of negotiating a plan during the exclusivity period. And clearly, as well, many cases reflect that just because there is a, quote, better plan, unquote, out there, that is not a basis for terminating the exclusivity period.

But having recognized all of that, it is my firm belief that there has been met the burden, as high as it might be, to terminate the exclusivity period in this case. Indeed, I am impressed with the impact of 203 North LaSalle in this context. It is not the only factor, it is an important factor in this decision. There is a real issue here. I don't resolve the issue, but there is a real issue about whether this is a new value plan. And we understand that issue because of Mr.

Trump's previous association with the debtors. Not because there is any assumption on my part that there is anything untoward that happened, any undue influence, any exertion of improper forces in connection with the submission of this plan, but rather with the recognition that the plan that Mr. Trump was chairman of the board and held the most substantial portion of shares of this company up until four days before the filing.

And the serious questions, which I don't resolve either, about whether those interests were actually abandoned -- I mean, he intended to abandon them, apparently, when he made his announcement on February 13th. Whether he could have accomplished that abandonment is unclear, and is left for further resolution. If it is a new valued plan and there is -- and we also understand that he continues to hold some interest. For instance, in the Ace (phonetic) -- I don't have the exact name of the company but -- and it is a small -- as low as .01 percent interest held by Ace, but in any event, it seems to be recognized that Mr. Trump continues to be an equity security holder of some portion of the debtors' shares. If it is a new valued plan, it certainly might run afoul of 203 North LaSalle.

We all understand that in that case, all -- old equity submitted a plan to purchase new equity within the exclusivity period of the debtors, and that that plan was rejected by the United States Supreme Court, who underscored the -- the significance and the requirement of market exposure

to such a new valued plan. Indeed, there was no specific expression or decision made about the form of that market exposure. The statement made reflected that it -- presumably, it could be a competing plan, or it could be a bidding process. It did not address whether that bidding process could be held before the plan was submitted.

But, frankly, I think Mr. Hansen's arguments in that regard are well founded. It -- it doesn't make much sense to require market exposure of a plan to reject a plan that presents a new value contribution, and to underscore the importance of testing such a plan in the marketplace at the same time that you have a -- that you approve a process, that you can reconcile that process with a pre-planned marketing procedure.

The Court focused on the need to extend an opportunity -- and here I'm quoting -- to anyone else, either to compete for that equity, or to propose a competing reorganization plan, unquote. Indeed, the debtors argue that the noteholders did compete for that equity and lost. But I think the competition that was envisioned by the Supreme Court was in a more open process.

Indeed, I do not contradict, I -- I don't think, by this concept that the PWS Holdings Court case at 228 F. 3rd. 224, from the Third Circuit in 2000, which declined to broaden the interpretation of the LaSalle case to accept the argument

that a new valued plan would per se require the rejection of exclusivity, because we're talking about terminating exclusivity here, a subject that was not taken up by the Third Circuit in that decision.

There are significant factors here, aside from, frankly, the LaSalle case, that require this process to be opened. And I specifically reject the consideration of the actual process of negotiation by which the debtors reached the decision that they did. It's certainly the definitive proposal, albeit, questioned by the debtors and others offered by the noteholders with committed financing, committed sufficiently for this purpose, along with the possibility of other offers.

And I don't know how seriously to take them. I don't give particular evidential weight to them, but I simply note that we have a definitive offer on the table. I don't even make any judgment about whether that plan is better or -- or is as good as the debtors' proposal. But in any event, there is a real proposal out there, and that is significant in this scheme.

I note that there is no formal Creditors Committee appointed in this case. I saw that the -- the noteholders requested a Committee. I -- I'm not sure if it was an unsecured Creditors Committee or a bondholders -- a noteholders Committee that was requested. I didn't know, although I heard

mention of a request for an unsecured Creditors Committee that was rejected. Frankly, I'm puzzled by that, since there -- there is a very large segment of unsecured debt in this case by certainly the debtors' valuation. So I leave that open. But I -- it's not a major factor in this context, but it -- it counts to underscore the difficulty with retaining the exclusivity period and the -- the kinds of considerations that point to terminating it.

Indeed, the potential benefit to the estate cannot be overstated. This is not, I certainly agree -- perhaps Mr. Walsh made the point -- a balancing act. There is a burden to be met, and that -- it's not a question necessarily of gauging harm against benefit. But the so-called harm of a short period of time for this process of competing plans to unfold is -- is not the kind of harm that would prevent this from -- this, meaning the termination of exclusivity, from happening. Rather, the potential benefit to the estate of -- of producing some return to a very large group of creditors, who are -- would be wiped out completely by the plan that is presently offered by the debtors, is a significant basis for termination.

Indeed, I note that the debtors were on an extension, although a 45-day one. I do not accuse the debtors of any delay. This has gone forward fairly expeditiously. But there is authority for the proposition that as you depart from the 12-day exclusivity period, there is a lesser burden down the

road.

Indeed, it's difficult for me to comment about the confirmability, or lack of it, of the debtors' plan. I was not able to review the disclosure statement objections that apparently were filed yesterday. And I don't know whether -- certainly the -- the LaSalle concerns will be discussed and resolved in the context of the confirmability of the debtors plan, and that certainly is a critical component of this decision. As well, Mr. Trump apparently is, or purports to be, a substantial creditor of the debtors.

It -- I wonder whether the plan could be found to discriminate unfairly in his favor if he is afforded this exclusivity right, which, of course, has substantial value. I will reject the questions raised about the noteholder's plan in terms of concerns with it. Of course, those concerns, I take it, are real and need to be addressed. But they are not the basis for rejecting the termination motion, nor are the so-called bad-faith allegations, including the 2019 deficiencies, which may be addressed at any time by any party, or the conflicts of interest that are asserted. They've been responded to. I don't rule on those issues. And any party is free to bring those forward.

I stand by the February 2, 2005 transcript in terms of the basic principles regarding termination of exclusivity. But, indeed, as we've discussed in the context of this

dialogue, that was a vastly different circumstance than this. Here, there is a need to have a fair and open process. I am not convinced that it will harm the debtors. I'm more convinced that it will be a substantial benefit to the debtors. Indeed, uncertainty is always problematic, but uncertainty that has the -- only the upside, if you will, for the debtors' estates is less detrimental than it otherwise might be.

I share concerns about the ongoing operations of the debtors. And those kinds of concerns, of course, will be considered in determining what is the best plan when we decide among competing plans. So those kinds of considerations are not lost. But in -- in terms of a process that cries out, and, indeed, it is the extraordinary circumstance, it is the very unusual case that this comes up in, and is not easily transferable, even to, perhaps, a more run-of-the-mill new value kind of case. But here we are. And I am willing and able to enter an order to terminate exclusivity on this record.

So we proceed to the -- well, let's discuss time frames and circumstances for implementing this decision. Indeed, we do not want extensive delay. The noteholders have indicated ability to immediately file their plan. Frankly, in light of prospects of discussion, possibilities of other offers, perhaps, a small window of time frame would be appropriate before those plans are filed, before the noteholder's plan is filed, to allow that to go forward in a

more deliberate way. I'm thinking about, say, a 30-day period for that process to unfold. I'll gladly hear from reactions to that.

MR. HANSEN: Your Honor, for the noteholders, we -- certainly, as we've said to you in our argument, would -- we hope that your decision results in a consensual process before you. I think what we would prefer would be to file the plan, have those negotiations, so that you can establish hearing dates for a disclosure statement, confirmation, et cetera, so that we have those all calendared, and then we'd negotiate.

If we wind up, during the course of those negotiations -- and you can just push those dates out by a month to let this happen. If negotiations are fruitful and result in a plan that everyone agrees on, we can, of course, then move very quickly to keep those dates and put on a -- on a joint plan. But I -- I think on behalf of the ad hoc noteholders, Your Honor, it would be better to permit us to file the plan, and then to have negotiations amongst all the parties, so that we can actually keep the track. Because if we wait a month to have a negotiation, I don't know where this -- and if nothing happens and we wind up -- we've then got to spend another 25 days to get ourselves out to hearings, et cetera. So I think it would be our preference to file it.

Your comments on the record today, in reading the opinion, have clearly stated to us, to the debtors, and to

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	)	Case No. 03-12227(PJW)
	)	
SEITEL, INC., et al.,	)	
	)	Courtroom No. 2
	)	824 Market Street
Debtors.	)	Wilmington, Delaware 19801
	)	
	)	
	)	November 3, 2003
	)	1:31 P.M.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE PETER J. WALSH
UNITED STATES CHIEF BANKRUPTCY JUDGE

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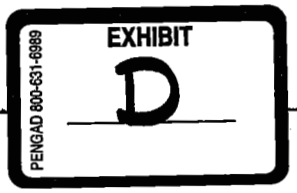

Appearances:
(Continued)

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For Erich Riesenberg:	ERICH RIESENBERG, Pro Se

equity that did not put up any new money at all would retain 20 percent of the company.

Our financial advisors believe that 20 percent of the company that is left for old equity is worth anywhere between 24 and $36 million. And they get that value plus they have the upside as anyone would have of holding the stock.

To refresh your recollection on the debtors' plan, Berkshire Ranch's plan, that plan says to old equity, vote for the plan and you get a piece of $10 million. Vote against the plan and you get nothing. Their plan -- their disclosure statement says that, in fact, equity has no value. That's their position, equity has no value. And the $10 million they're giving to old equity is a gift.

Now, Your Honor, that equals 40 cents a share. And, of course, we had great debate last time that old equity, unless there's a new development that I haven't heard as of right now, that old equity is not necessarily getting the $10 million, even if they vote in favor of the plan. Because if you recall, the old equity also shares as a matter of law under 510(b) with the class claimants, who have a class action lawsuit for the purchase and sale of securities.

They also share in that $10 million. The interesting point is that if the debtor says that old equity has no value and the class claimants have value. I don't know if we get -- if old equity gets anything for that matter. But the truth of

with us.

The -- Berkshire and Ranch never talked to us about a plan. When we told them we had a plan, they never sat down with us to see if it was something better for the other side. They knew it, that was their plan from the beginning, that's what they're saying to Your Honor today, look, Your Honor, let's have a vote and then we'll see what happens. And they're banking on that vote being positive because equity doesn't know.

We have a plan that's confirmable. We have some impaired classes that will vote for the plan. And we think we can proceed. And all we're asking is a dual track. I don't even know the delay is that long. The dual track, let the equity vote, we'll have a valuation hearing at confirmation and it's resolved and it's fair. And ultimately, I would think that's where Your Honor would want to be.

THE COURT: I think it's important for the equity holders to know what the alternative is. And so I'm going to terminate the exclusivity.

However, we're going to stay on the same schedule so that we will have the debtors' plan up for confirmation hearing -- and I suspect that the November 17 hearing is not going to do much if this is going to be contested until the real hearing will spill over to December 3. And we'll determine on December 3 whether the debtors' plan is confirmable. And if it's not,

then obviously the Equity Committee can then tee up its plan.

But I think in the interest of giving to the equity holders a full picture of all that is in the cards here, that they should be able to see what the Equity Committee is offering.

And, quite frankly, the numbers that Mr. Gottlieb has thrown out, it's pretty obvious that the parties are polls apart in terms of the enterprise value here and we'll see at confirmation hearing on the debtors' plan who's right in that regard.

MR. GOTTLIEB: Your Honor, may I ask you -- one technical problem. We can file our plan and disclosure statement right away. The problem we have is that the ballots actually have to be received by November 7th, which is this Friday.

The other motion we filed may be slightly -- may be no help, but it may be slightly helpful. We ask for another week. That would enable some shareholders out there to have at least a chance to have heard about our plan before they send back the ballot. Otherwise, anyone who hears about it tomorrow probably doesn't have a chance to get a ballot and get it back.

So, if we could have an extra week, Your Honor, and if Your Honor could ask that the balloting agent make sure that if people called and asked for ballots, that they could get a ballot, it would be slightly helpful, I think.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re	)	Case No. 08-02005
	)	(Chapter 11)
HAWAIIAN TELCOM COMMUNICATIONS, INC., et al.,	)	July 1, 2009
	)	9:43 a.m.
Debtors.	)	
	)	

TRANSCRIPT OF MOTION TO EXTEND EXCLUSIVITY PERIOD TO FILE PLAN
BEFORE THE HONORABLE LLOYD KING
UNITED STATES BANKRUPTCY JUDGE

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for a certain amount of time, then I'd like to make an official request for a one day PUC approval process, but -- but if it's not up to us that's just our estimate of how long it might take, that's all. We're happy for it to go as fast as possible.

MR. BRAY: Several quick observations, Your Honor, in the comments from the Secured Lenders about Chanin and the PUC I suspect may be indicative of the type of ownership that one could expect if the plan is confirmed.

Secondly, it's hard or it's disingenuous to say that the Sandwich Isles proposal was in fact seriously vetted by the professionals when they never gave us a chance to do any diligence to really make a serious proposal to them, very much a self fulfilling prophecy, Your Honor.

THE COURT: Thank you. Is the matter submitted?

MR. MARCUS: Yes, Your Honor.

THE COURT: All right. The matter is submitted. The motion will be denied.

Now, in denying the motion to extend exclusivity this is not to be taken as a criticism of the Debtors, the Debtors' proposed plan, the Secured Creditors. It's not an endorsement of Sandwich Isles. It's merely a reflection that the dominant factor in this case is the public interest. This is Hawaii's telephone company. At our first hearing the Chair of the Public Utilities Commission explained why -- that the failure of this reorganization was not an option.

Necessarily regulatory uncertainties abound at this moment. State and Federal necessarily there will be delays to give the regulatory entities an opportunity to consider whatever they must consider.

Cause has already been extended once in this case, and it's now time to give others an opportunity. Now, this is not merely providing an opportunity to -- to Sandwich Isles. There's no limitation. If the Creditors' Committee comes up with a plan -- come up with plan that has to be qualified. You don't just come up with a plan. You have to do a disclosure statement and that's usually the -- the barrier.

As I said, if -- if -- this motion being denied it does not guarantee to Sandwich Isles a dual track plan, and we may or may not be back here over the desire of Sandwich Isles to have access to whether we call it the diligence room or the data room, but I think we're talking about the same thing.

The Public Utilities Commission is neutral on this motion. It has not endorsed the -- the plan that's been filed by the Debtors and supported by the Secured Lenders.

I'm not satisfied that there's any harm in allowing the possibility of a competing plan to be filed. I'm sorry that no one was here from the Union, but I -- I don't feel that this possibility of a proposed plan necessarily destabilizes the Debtor or the Debtors' operations.

A lot of the fight, the dispute has been over the

qualifications of Sandwich Isles to file a competing plan. If it's qualified or unqualified that will be apparent when the Sandwich Isles files a disclosure statement, if it files a disclosure statement. If -- if everything that the Debtors and their advisers have suggested about Sandwich Isles is -- is accurate, I doubt that Sandwich Isles will be able to file a disclosure statement at least one that -- that has any hope. But, again, because of the public interest, Sandwich Isles should not be denied an opportunity to see if it can present a serious alternative to the plan that has been filed.

There's always the possibility that the termination of exclusivity may speed things along towards a consensual plan. A consensual plan can mean different things. It may mean the inclusion of Sandwich Isles or it may just mean that the -- the Debtor, the Secured Lenders and the -- the constituency of the Creditors' Committee may get together. If those three come together that's a pretty powerful alliance as far as the confirmation of plan of reorganization is concerned.

I'm aware of the nine factors in the Dow Corning case, and I'm not going to go over them one by one, but I have considered all of those. Some of those don't necessarily favor extension of confirmation, they're just things to think about, and I think that my thought process has addressed them, but it's apparent that Sandwich Isles, I say, has been shut out from diligence efforts and those diligence efforts -- the inability

of Sandwich Isles to get information, as I said, makes a lot of the criticisms just a self fulfilling prophecy because how can they go to lenders, how can they get commitments that they may need if they don't have information as to what it is that they wish to acquire.

The Debtors are encountering staggering professional fees which may be increased if the motion of the State is granted and, unfortunately, because of the regulatory situation there's no immediate end in sight. This is going to continue. So if there's going to be the possibility of a competing plan let's get it under way now so that it can be -- it -- possibly even more than one competing plan may be considered.

The Debtors' customer base is shrinking because the competitors are unregulated. They don't have to supply the public services that this Debtor is required to do. This Debtor has lots of serious issues that arise because of its regulation. As it has pointed out, its pricing and everything necessarily is made public so that the competitors can -- can see that.

So to the extent we can move this along let's move it along, let's see if there is the possibility of a competing plan.

There necessarily will be confidentiality concerns if Sandwich Isles is given access to the data room or the diligence room. That's something that is dealt with frequently in reorganization cases, and we should be able to deal with here.

So for all those reasons I'm satisfied that the Debtors have not demonstrated cause to continue the situation where only the Debtor plan may be considered and an order will be entered simply -- the Court will generate the order simply stating that for the reasons stated in open court the motion is denied. Is there anything else that requires attention today? Mr. Guben.

MR. GUBEN: Yes, Jerrold Guben on behalf of the State of Hawaii. Your Honor --

THE COURT: Please speak into the microphone, Mr. Guben.

MR. GUBEN: -- I was informed this morning that the Governor has exercised her right to extend the June 30th, 2009 deadline on Senate Bill 603 to sign or veto it to July 15th. That does address the issue of their regulatory regime possibly coming out of each plan.

THE COURT: Maybe you should tell -- tell everyone what that -- what that bill is.

MR. GUBEN: That was a bill introduced this Spring in the Legislature, Senate Bill 603, with respect to a partial deregulation of the consumer telephone rates and giving greater flexibility to Hawaiian Telephone Company and obviously the reorganized Debtor with respect to the regulation of consumer rates primarily. One of the reasons being that they were facing not only wireless competition, but competition from the other

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Counsel for the Official Committee of
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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

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In re

FREMONT GENERAL CORPORATION, a Nevada Corporation

Debtor.

Tax I.D. 95-2815260

Case No. 8:08-13421-ES

Chapter 11

ORDER GRANTING MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ORDER TERMINATING THE EXCLUSIVE PERIODS IN WHICH ONLY THE DEBTOR MAY FILE A PLAN AND SOLICIT ACCEPTANCES THERETO

Hearing

Date: July 14, 2009
Time: 10:30 a.m.
Place: Courtroom 5A
411 West Fourth St.
Santa Ana, California

On June 8, 2009, the Official Committee of Unsecured Creditors appointed in the above-captioned chapter 11 bankruptcy case (the "Creditors' Committee") filed and served that certain *Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto; Memorandum Of Points And Authorities In Support Thereof* [Docket # 728] (the "Motion")[1] and, in support thereof, the Creditors' Committee filed and served that certain *Declaration Of Hugh Steven Wilson In Support Of (I) Motion For Order Pursuant To Local Bankruptcy Rule 9075-1 Shortening Time And (II) Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 731] (the "Wilson Declaration"), *Declaration Of Deborah Hicks Midanek In Support Of Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 732] (the "Midanek Declaration"), and *Declaration Of Jonathan S. Shenson In Support Of Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 730] (the "Shenson Declaration", and together with the Motion, the Midanek Declaration and the Wilson Declaration collectively, the "Moving Papers").

On June 18, 2009, John Mlynick and Andrey Muthcnik objected to the Motion by and through that certain *Objection To The Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto [Docket 728]; And Declaration Of John Mlynick In Support Thereof* [Docket # 755] (the "Mlynick Objection").

On June 30, 2009, the Official Committee of Equity Holders joined in the Motion by and through the filing of that certain *Joinder and Support of Relief Requested in Motion of Official Committee of Unsecured Creditors for Order Terminating the Exclusive Periods Which Only the Debtor May File a Plan and Solicit Acceptances Thereto; Declaration of Philip E Strok in*

[1] Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Motion.

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Support Thereof; Filed by Interested Party Official Committee of Equity Security Holders [Docket # 779] (the "Joinder").

On July 6, 2009, the above-captioned debtor and debtor in possession (the "Debtor") objected to the Motion by and through that certain *Fremont General Corporation's Response To The Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto; Declarations of Donald E. Royer, Ricardo S. Chance, And Theodore B. Stolman In Support Thereof* [Docket # 776] (the "Debtor's Objection").

On July 10, 2009, the Creditors' Committee objected to certain evidence contained in the declarations submitted by the Debtor in support of the Debtor's Objection by and through that certain *Official Committee of Unsecured Creditors' Evidentiary Objections To Declarations Of Donald E. Royer, Ricardo S. Chance And Theodore B. Stolman In Support Of Fremont General Corporation's Response To The Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 789] (the "Evidentiary Objection to the Debtor's Objection").

On July 10, 2009, the Creditors' Committee also filed and served that certain *Reply Of Official Committee Of Unsecured Creditors To Debtors' Response To The Committee's Motion For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 787] (the "Reply") and, in support thereof, that certain *Supplemental Declaration Of Hugh Steven Wilson In Support Of Reply Of Official Committee Of Unsecured Creditors To Debtor's Response To The Creditors' Committee's Motion For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 788] (the "Supplemental Wilson Declaration" and together with the Reply, the "Reply Papers").

On July 14, 2009 at or about 10:30 a.m., the Court held a hearing (the "Hearing") to consider the Motion. Jonathan S. Shenson appeared at the Hearing on behalf of the Creditors' Committee and other appearances were as noted on the record.

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The Court has reviewed and considered the Moving Papers, the Joinder, the Mlynick Objection, the Debtor's Objection, Evidentiary Objection to the Debtor's Objection, and the Reply Papers and all other pleadings, exhibits, documents and evidence submitted in conjunction with the Hearing on the Motion; the arguments and representations of counsel at the Hearing; and the record in this case; and based on the foregoing review and consideration, the Court finds that:

A. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2);

B. Notice of the Motion and the Hearing was adequate and appropriate under the particular circumstances and complies with the applicable provisions of Title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the Central District of California, and this Court has determined that no other or further notice need be given; and

C. The legal and factual bases set forth in the Motion establish good and sufficient "cause" for the Court to enter an order, pursuant to section 1121(d) of the Bankruptcy Code, terminating the period under section 1121(c)(3) of the Bankruptcy Code in which the Debtor has the exclusive right to solicit and obtain acceptances of a plan and during which time competing plans may not be filed ("Solicitation Exclusivity Period").

THEREFORE, IT HEREBY IS ORDERED THAT:

1. All objections to the Motion are overruled in their entirety, including, the Debtor's Objection and the Mlynick Objection.

2. The Motion is **GRANTED**, and Solicitation Exclusivity Period shall be, and is hereby, terminated effective as of July 14, 2009. 17

DATED: July 16, 2009

HONORABLE ERITHE A. SMITH
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

In re: FX LUXURY LAS VEGAS I, LLC,	)	E-Filed: 06/16/10
	)	
Debtor.	)	Case No. BK-S-10-17015-BAM
	)	Chapter 11

TRANSCRIPT OF PROCEEDINGS
OF
HEARING RE: MOTIONS
VOLUME 1
BEFORE THE HONORABLE BRUCE A. MARKELL
UNITED STATES BANKRUPTCY JUDGE

Friday, June 11, 2010

9:30 a.m.

Court Recorder: Helen C. Smith and Liberty Ringor

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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Also Present:	MITCHELL J. NELSON, ESQ. President FX Luxury Las Vegas I, LLC

Let's get it done.

They have a window of August. We'll be ready by August to have that.

THE COURT: What's your position with respect to the debtor's request for a third party neutral to come in and see if -- not necessarily knock heads together but get people to come together?

MR. PARKINS: I have no position. I haven't been able to talk to a number of constituencies at all, that I have no position.

THE COURT: Thank you.

Anything else?

MR. PARKINS: No. Thank you.

THE COURT: All right. Thank you.

Anyone else wish to speak? All right.

The matter will be submitted as of now. I will take a lunch break. We will come back at 1:30. I fully expect at 1:30 to announce my decision on this motion, and then we can take up the rest of the calendar.

So we'll adjourn 'til 1:30.

THE CLERK: All rise.

(Recess at 12:22:36 p.m.)

(Court reconvened at 01:36:35 p.m.)

THE CLERK: All rise.

Court is back in session.

THE COURT: Please be seated. All right.

Back on the record with respect to FX Luxury Las Vegas.

Anything from the parties before I give my decision? All right.

Before me is the motion to terminate exclusivity filed by various second lienholders. As you all know, it's been adequately briefed. I've heard testimony. These will constitute my findings of facts and conclusions of law under Rule 7052 incorporated and applicable in a contested matter under 9014(c).

I'm going to grant the motion. I'm going to grant the motion for the following reasons and upon the following logic.

First, we start with the proposition that the debtor has at least 120 days by statute, initially, to propose and file a plan. I acknowledge what the first lien lenders have indicated may be 180 days here since they filed a plan with the case, but that matters not since we're actually only about 45 days into the case.

In that 45 days I have observed a lot, learned a lot, and heard a lot of argument. Under 1121(d), that period of time given to the debtor -- and strangely the debtor, not the debtor in possession. But that time given to the debtor can be terminated for cause.

Parties haven't really focused so much on cause or the cases, but I think it appropriate to give a little history of

exclusivity because I think my decision today to terminate is supported by that history and then some reference to what little case law there is with respect to this.

First, 1121 is the product of a compromise when congress in 1978 fused the old Chapter XI -- excuse me -- yeah, XI and Chapter X, Chapter XI which could not affect either shareholders or secured creditors.

The debtor was given the exclusive right to file a plan during the entire case much like happens currently in Chapter 13.

In public-company cases in which the debt was more than 250,000 in Chapter X there was no exclusivity. The compromise was to give exclusivity because there was some acknowledgement that in most cases it was important for the debtor to have the exclusivity at least to the initial phase of the case but with the understanding that there were substantial abuses under the old Chapter XI cases when the debtor had exclusivity for too long, that is to say the life of the case.

That's, if you will, the rough generalization of a rough history of the provision for cause.

Congress isn't particularly helpful in H.R. Report 595. The only thing that they tell us is that, quote, "Cause might include an unusually large or unusually small case delay by the debtor or recalcitrants among creditors."

From that, the little case law has attempted to figure out

what would constitute cause to terminate. For that I'll adopt as my decisional guide today Adelphia Communications cited by second lien lenders and responded to in part by the first lien lenders.

In particular, the Bankruptcy Court Decision, 336 Bankruptcy Reporter at 674 which was ultimately affirmed by the district court at 342 Bankruptcy Reporter 122, that case laid out a factor test to assess whether or not cause to terminate exclusivity.

Noting -- I mean, I'll note that the Court there found there was no cause to terminate exclusivity but said that the following factors ought to be considered, and I paraphrase.

The size and complexity of the case, the necessity of sufficient time to prevent the debtor to negotiate a plan and prepare adequate information, the existence of good-faith progress towards reorganization, the fact the debtor is paying their bills as they become due, whether the debtor's demonstrated reasonable prospects for filing a viable plan, whether the debtor has made progress and negotiations with its creditors, the amount of time which has elapsed in the case, whether the debtor is seeking extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands, and whether an unresolved contingency exists.

Now, I appreciate especially the first lien lenders responding to that point by point, but I disagree with their

application of the facts to that standard.

First, again, let me recount what I've been able to glean of the history of this property over the last several years. And I say property instead of debtor because as we get to it, I think the debtor in this case is in the somewhat unusual situation of really not being in control of its property or its cash flow.

We know that in starting in January 2009 the lenders exercised their rights under the various lockbox arrangements to take control of the cash flow from this property and have more or less through various means and devices controlled that cash flow since that time.

Moreover, we have the testimony of the president of the debtor submitted in paragraph 18 of his declaration here that at least since the time of the appointment of the receiver, state court receiver, which occurred nine months prior to the filing of this case, debtor has not been in physical control of its property since that time.

What that tells me is that this is not, if you will, what is generically referred to as an operating case. This isn't like Adelphia where you have hundreds of thousands of subscribers and employees and the like.

Indeed, the debtor testified here today that there were three employees. Also testified that were the lenders to take over, probably the external casual observer would not see any

change.

In short, the debtor are holding a group of assets, but they are not managing them. They are not operating them. That is done by Cushfield & Wakeman (sic).

And during all this, the real issue is -- which is the issue, to be frank, in any financial reorganization -- who controls the cash flow, and that is I guess first and foremost here along with the value of the property.

Now, the debtor opened up the case by filing a plan that crammed down all unsecured creditors, crammed down the second lienholders, purported to dispense with the 341 meeting, and, in essence, accomplished what you could have accomplished in a state court receivership proceeding had there been a foreclosure.

And that's why I thought it was both odd and telling that in the debtor's reply filed last night they said again at page 8, lines 15 through 16, that if the debtor did not file this bankruptcy then creditors would have been wiped out by foreclosure.

I guess that's as true as it goes, but I'm not exactly sure what creditors other than the first lienholders would have obtained under the plan as filed by the debtor, initially.

It seems to me that everyone else at least under their plan, with the possible exception of some priority creditors, would have received nothing.

Add to the fact that at most the unsecured trade claims here are about $275,000. I get that from schedule 2 of the bid procedures and from the debtor's schedules. And both the proposed plan by the second lienholders and at least the oral indications from the debtor is that those will be paid in full.

If I look at that and I look at the requirements of 1129 with respect to the necessity of paying administrative creditors including priority creditors in full, really this case gets down to the first lienholders versus the second lienholders. There's really not too many other constituencies that have to be -- to use the vernacular -- have a dog in this fight.

That all leads to, you know, as was pointed out by Mr. Baume and pointed out accurately, that this is a changing picture. This is a moving picture. This is not a still picture.

New things keep coming up including the debtor's stated intention of withdrawing the plan that it filed when it commenced this case, and changing it -- although the parties will disagree as to whether it's been radically different or just different ways, but changing it in ways that they believe respond to this Court's concerns, and this Court's concerns are simply the concerns that the law be enforced as it is written.

So with respect to all of that, we come down to a debtor that's not in physical control of its property, not really in

control of its cash flow, is having it managed by another person, is producing more cash than it consumes, was in a receivership and in a distressed position for at least nine months prior to filing of this case during which period I can't believe that the relevant parties weren't trying to find buyers for the property because I take it that with the possible exception of the second lienholders, the first lienholders are certainly not in the business of running and managing property.

We come down then back to the factors in terms of the size and complexity of the case. Although this case is large in terms of dollars, I think it's relatively simple in terms of the players.

Part of the reasons I think that the fighting has been so intense is that the issues are relatively small. That is to say first lienholders and the debtor believe that there's only enough value to cover, at most, part of the first lienholders. Second lienholders tend to disagree and may see more value there.

The necessity of sufficient time to prevent the debtor to negotiate a plan, well, debtor had time. Debtor had the nine months prior to filing the case and file the prepackage plan which (indiscernible) since withdrawn.

I'm not exactly sure that exclusivity would allow the debtor to file something that didn't fly and then reset the clock.

The existence of good-faith progress toward reorganization, I want to reemphasize what Mr. Baume said opening up the proceeding. I do not in any way question the good faith of any participant here.

I know some of the lawyers. I know some of the lawyers involved, and I think nothing but the best of them with respect to their intentions and sincere devotion to their clients.

I may disagree with their tactics, and I may disagree with the way in which they lay out their positions, but nothing that I have seen in this case calls into question the good faith of the debtor or any other participant.

The fact the debtor is paying their bills as they become due, it's almost a nullity here because the debtor is not really paying the bills, Cushman & Wakefield is. They're paying the bills, the rents that are being produced by the property.

Whether the debtor has demonstrated reasonable prospects for filing a viable plan, well, again, debtor has changed its course. It has indicated it will withdraw the prepackage plan that it has filed.

And, I mean, I'll get into it in a second in terms of the debtors defenses, but I do not remain -- well, let's put -- I remain unconvinced that the procedures put forth by the debtor were reasonably calculated to produce a confirmable plan in a short period of time.

And, in essence, that was their second bite at the apple, and I'm not convinced that it was -- or that it ultimately would lead to the result that they desire.

Whether the debtor has made progress in negotiations with its creditors, I'll admit that it may be that the jury, so to speak, is still out on that.

Although the amount of litigation and the amount of time that the parties have been together would suggest to me that although hope springs eternal, I don't hope much for a consensual resolution here unless one side or another or both parties significantly retract some of their positions or stated positions up to this point which is fine. That's what ultimately a Court is for is to resolve disputes when put before them.

The amount time which has elapsed in the case, clearly this favors the debtor. I mean, it's been only 45 days, but that's somewhat misleading as well. It's not as though the bankruptcy was just filed 45 days ago. It's been in contemplation since at least last fall.

The process and procedures that lead up to the economic results contemplated by the plan have been in place longer, and to put it bluntly, if the best they can come up with is what they have put forward thus far, I have some doubts as to whether keeping exclusivity in place is in the best interest of the estate.

Whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands, well, of course you use exclusivity to do that. That's what it's for.

But I read this factor to be unduly seeking to impose the will upon another, and I don't think that's really occurred here.

But I'm not exactly sure -- to hearken back to the history -- this is the type of case in which exclusivity serves any particular function for the estate, again, given the relatively small universe of the parties who have an interest in what's going forward.

And whether there's an unresolved contingency. The only unresolved contingency I see from the parties' perspective is what I would rule with respect to a cash-collateral motion with respect to gross or net rents, and I'm certainly not going to decide that now if it's not squarely before me.

Adding all of those up on balance, I believe that termination of exclusivity is warranted simply because I think the parties have engaged in good-faith litigation efforts and good-faith negotiation.

Again, I'm mindful that they have been in negotiation since last year, and they have yet to find a common ground for which they can go forward.

At some point one has to step back from saying a common

ground can be resolved or can be found in a reasonable period of time and simply say if you can't find a common ground, the provisions of the code have a response to that, and the response to that is it will pick clear winners and clear losers with respect to a plan, and as stated by Mr. Parkins, that's 1129(c).

The debtors -- or the debtor says, well, listen, we've terminated the lockup agreement. We've revised the auction procedures. This is no longer a new-value plan. All of which are interesting arguments, but all of which ultimately I reject.

First, I understand the lockup termination, and I appreciate what that has done to opening up, but an auction only works to return to creditors the highest value if it's a true auction. That is to say if, in fact, the barriers to entry, the entry cost forbidding a relatively evenly spread, and, in fact, the potential bidders have equal access to information.

I'm not exactly sure that the bid procedures and the restructuring of the proposed cash-collateral order accomplish that end.

I mean, as was pointed out by the second lienholders, the lockup termination was followed by a transfer of some of the more odious provisions of that as to third-party participation simply to the cash-collateral order with respect to going

forward.

And so though the provision -- the lockup agreement may be gone, but its melody, if you will, lingers on in terms of the provisions as was pointed out this morning in the cash collateral.

The open-auction provisions or the provisions with respect to the bid procedures, again, not technically directly before me but put up by the debtor as a reason not to terminate exclusivity because they have loosened up, if you will, the access to the process by which the economics of this debtor will be obtained.

I'm afraid I just don't buy it. I think most telling was the colloquy with Mr. Tenzer on his argument that it's fairly clear that those managing the bidding process reserve the right to reject bids that don't pay the lenders in full.

Although, I was told -- these aren't Mr. Tenzer's words -- but, effectively, get real, that's not the way the world works. I understand that, but I also understand that the reservation of that kind of discretion to the debtor and to those controlling the assets of the debtor is exactly the type of pressure that exclusivity was thought to bestow upon Chapter XI debtors.

If you're going to have an open and free auction, it's clear the first lien lenders are going to have to be dealt with, but they should be dealt with in ways that don't affect

or infect the auction process in terms of getting bidders to appear.

Moreover, although not raised this morning but raised in the papers, there is some concern in terms of the open, the -- I don't want to say -- it's not really the fairness of the process but the structure of the process when one bidder is automatically prequalified, that is to say the insider group that is no longer the stalking-horse bidder.

Plus, the first lien lenders in addition to the provision saying that they can reject bidders if they don't propose to pay them in full, also reserved their entire rights to credit bid. That doesn't produce an auction that in theory or in practice will yield the highest results to the estate.

I'm torn on that somewhat because as I have said before I really haven't seen anything that would indicate the value of this property is anything close to the outstanding debt of the first lienholders.

And, thus, one might fairly well say, well, if the first lien lenders want to do it, it's really their ball, let them call the rules.

To that I would respond, well, perhaps, you could have done that were you in a state court receivership where the receiver acts on behalf of the secured party, but once that action dissolves and the debtor commences a bankruptcy case, bankruptcy code requires me to take into account the interests

of the entire estate, not just the first lienholders, not to approve processes that unduly favor one party or the other, but to try -- to steal the words of the second lienholders -- to open up a transparent process.

Although I understand and acknowledge that it is the second lienholders' burden to demonstrate cause, and though I understand and acknowledge that it is rare that exclusivity is terminated -- as I said earlier, this would be the -- this is the first time I've done it since I have been on the bench.

And also understanding and acknowledging that it's a heavy burden at least under the case law, I think that burden has been met here for the reasons that I have stated.

I would ask Mr. Parkins to submit an order to that effect.

MR. PARKINS: Thank you, your Honor.

THE COURT: Mr. Baume, do you want a few minutes to discuss my decision with the first lien lenders before we move on?

MR. BAUME: Yes, your Honor. In fact, you were reading my mind. I was going to ask you if we could have a continuance for a little while to --

THE COURT: We can call it an adjournment while we're here. A continuance means we actually move the date.

MR. BAUME: You know, your Honor, I just had -- I feel compelled to tell you I started out practicing in Illinois where we used the word continuance.

The relief described hereinbelow is SO ORDERED.

Signed July 22, 2010.

Ronald B. King
United States Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

IN RE:	§	
	§	
BOSQUE POWER COMPANY, LLC,	§	**CASE NO. 10-60348-RBK**
ET AL.,	§	
	§	**JOINTLY ADMINISTERED**
	§	
DEBTORS	§	**CHAPTER 11**

ORDER REDUCING DEBTORS' EXCLUSIVE PERIOD FOR ACCEPTANCES OF PLAN

On July 20, 2010, came on to be heard the "Joint Motion of Prepetition Agent and Working Group for Entry of Order Pursuant to Section 1121(d) of the Bankruptcy Code Limiting the Debtors' Exclusive Period for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereof to the Initial 120-Day Period Specified under Section 1121(b) of the Bankruptcy Code" filed by the ***Prepetition Agent and the Working Group*** (Court document #327) (the "Motion"), and the Court is of the opinion that cause exists under section 1121(d)(1) of the Bankruptcy Code to reduce the time for acceptances of a plan.

It is, therefore, **ORDERED, ADJUDGED, AND DECREED** that:

1. Debtors' exclusive period for acceptances of a plan terminates on July 22, 2010.

2. Any party in interest may file a proposed plan of reorganization, seek approval of a disclosure statement, and, if approved, solicit acceptances of its proposed plan.

3. All other requested relief is denied.

# # #

Signed July 22, 2010.

Ronald B. King
United States Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

IN RE:	§	
	§	
BOSQUE POWER COMPANY, LLC,	§	**CASE NO. 10-60348-RBK**
ET AL.,	§	
	§	**JOINTLY ADMINISTERED**
	§	
DEBTORS	§	**CHAPTER 11**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In connection with the Order Reducing Debtors' Exclusive Period for Acceptances of Plan, the Court hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Debtors filed these Chapter 11 cases on March 24, 2010, and the cases are jointly administered. Debtors own and operate an electric generating plant in Bosque County, Texas.

2. The claims of the Prepetition Agent and the Working Group are secured by a first lien on the Debtors' assets with a debt of approximately $410 million.

3. In addition to the secured debt, the Debtors invested approximately $400 million in capital to acquire and maintain the Debtors' assets.

4. The Debtors filed a proposed plan prior to the expiration of exclusivity under section 1121(b). The Prepetition Agent and the Working Group seek to shorten the Debtors' 180 day exclusive period for acceptances of the Debtors' plan so that, as secured creditors, they may file a competing plan.

CONCLUSIONS OF LAW

1. This is a core proceeding over which this Court has jurisdiction and venue under 28 U.S.C. §§ 157, 1334 & 1408.

2. This Chapter 11 case involves the bankruptcy nuances of the "new value exception" and credit bidding by secured creditors. Because this is an unusually large case, and in order to give creditors the best chance of being paid in whole or in part, cause exists under section 1121(d)(1) of the Bankruptcy Code to reduce the time for acceptances of the Debtors' proposed plan so that other parties in interest may file a proposed plan. This could allow creditors a choice between competing plans and would promote the maximum recovery to creditors. It is also intended to promote an environment in which a consensual plan may be negotiated. *See* ***In re Situation Mgmt. Sys.***, 252 B.R. 859, 865-66 (Bankr. D. Mass. 2000); ***In re Lehigh Valley Prof'l Sports Club, Inc.***, 2000 WL 290187 at *3 (Bankr. E.D. Pa. 2000); ***In re Crescent Beach Inn, Inc.***, 22 B.R. 155, 161 (Bankr. D. Me. 1982); *cf.* ***In re Dow Corning Corp.***, 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997) ("the primary consideration should be whether . . . doing so would facilitate moving the case forward").

3. Any Finding of Fact which should more appropriately be characterized as a Conclusion of Law shall be considered a Conclusion of Law herein. Similarly, any Conclusion of Law which should more appropriately be characterized as a Finding of Fact shall be considered a Finding of Fact herein.

# # #